



Freedom of information – Exemptions

December 2010

The right to access documents held by government is subject to certain limitations that ensure that sensitive information, including personal, secret or national security information, is properly protected. If you request a document from an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you may not be given access to the document if it falls within one of the categories of exemptions under the FOI Act. There are two types of exemptions: documents which are exempt, and documents which are conditionally exempt and will not be released if their disclosure would be contrary to the public interest. If an agency or minister decides not to provide a document to you because the document falls within one of the exempt or conditionally exempt categories, they must explain their reasons in the notice of decision they give you. If exempt information can be deleted from part of a document, an edited copy of the document can be provided. If you do not agree with the agency's or minister's decision, you can ask for the decision to be reviewed by the agency or the Australian Information Commissioner.

Exemptions

There are nine categories of exemptions under the FOI Act. If a document meets the criteria for one of these categories, an agency or minister can refuse to release it. The categories are:

- documents affecting national security, defence or international relations
- Cabinet documents
- documents affecting enforcement of law and protection of public safety
- documents to which secrecy provisions in other legislation apply
- documents subject to legal professional privilege
- documents containing material obtained in confidence
- documents whose disclosure would be in contempt of Parliament or in contempt of court
- documents disclosing trade secrets or commercially valuable information
- electoral rolls and related documents.

Conditional exemptions

Another eight categories of document are conditionally exempt under the FOI Act. They are documents relating to:

- Commonwealth-State relations
- deliberative processes relating to agencies' or ministers' functions
- the Commonwealth's financial and property interests
- certain operations of agencies (such as audits, examinations and personnel management)
- personal privacy
- business affairs
- research (by the CSIRO or the Australian National University)
- Australia's economy.

If a document meets the criteria for one of the conditional exemptions, a further step applies in deciding whether to release the document. The decision maker must consider whether in the

circumstances giving access to the document would be contrary to the public interest. Access cannot be refused simply because the document falls within one of the conditional exemption categories: release must also be contrary to the public interest.

The public interest test

In deciding where on balance the public interest lies, the decision maker must weigh factors favouring access and those favouring non-disclosure.

The FOI Act sets out some factors that favour giving access when applying the public interest test. These factors include whether giving access would promote the objects of the Act, including scrutiny of government activity and promoting public participation in government decision making.

The FOI Act also sets out some factors which must not be taken into account. They include embarrassment to or a loss of confidence in the government, misunderstanding, confusion or unnecessary debate, and the seniority of the document's author.

The public interest factors will differ from case to case and will be influenced by the criteria in the conditional exemption that applies.

Reasons for decisions

If an agency or minister decides to refuse your request for access to a document, they must give you reasons for their decision. This includes an explanation of the exemption or conditional exemption that they say applies. Where the decision maker concluded that giving access to a conditionally exempt document would be contrary to the public interest, they must set out the factors that they considered.

The requirement to give reasons does not oblige a decision maker to confirm or deny the existence of a document which would be exempt because it affects national security, defence or international relations, or where disclosure of its existence could prejudice an investigation or affect the enforcement or administration of the law.

Edited documents

If a decision maker determines that part but not all of a document contains exempt information, they may delete the exempt information to allow the rest of the document to be disclosed. Information that is irrelevant to the scope of the request may also be deleted.

The decision maker should state in their reasons where there has been editing and on what grounds. The editing should also be clearly indicated on the copy that is provided.

Discretion to disclose

An agency or minister can decide to disclose a document even if the document meets the exemption criteria.

Can I seek a review of the decision?

Yes. If you disagree with the decision of a government agency or minister about access to information under the FOI Act, you can ask for the decision to be reviewed. See FOI Fact Sheet Freedom of information - your review rights for more details.

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

For further information

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