



ACT
Government

GUIDANCE ON FREEDOM OF INFORMATION REQUESTS

CHIEF MINISTER, TREASURY
AND ECONOMIC DEVELOPMENT
DIRECTORATE

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DOCUMENT CONTROL

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REVISION

This Guideline must be reviewed and updated on an annual basis (or more frequently following major change to business operations and/or priorities) as a part of Chief Minister, Treasury and Economic Development Directorate’s freedom of information processes.

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REVIEW AND AUTHORISATION

The Guideline is to be reviewed and endorsed by the Executive Director, Corporate, Chief Minister, Treasury and Economic Development Directorate.

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Date

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THE ACT FREEDOM OF INFORMATION ACT 2016 (THE FOI ACT)

The FOI Act gives you the legal right to:

- > access government information unless access to the information would, on balance, be contrary to the public interest;
- > request information concerning themselves to be changed if it is incomplete, out-of-date, incorrect or misleading; and
- > appeal against a decision to restrict access to a document or refuse to amend/annotate a personal record.

WHAT IS GOVERNMENT INFORMATION?

Government Information is information held by an agency¹ or Minister, excluding information relating to a Minister's personal or political activities or created or received by a Minister in the Minister's capacity as a Member of the Legislative Assembly.

Government Information² can include papers and other materials on which there is writing and any other material from which sounds, images or writing are capable of being reproduced. This includes emails and other electronic records, post-it notes, message pads, maps, diagrams, plans, photographs, film, sound and video recordings, notebooks and diaries.

WHAT IS AVAILABLE WITHOUT AN FOI ACCESS APPLICATION?

In addition to providing for access to information through a formal request, the *Freedom of Information Act 2016* also requires agencies to proactively release a range of government information including:

- > functional information about the agency including its structure, functions and kinds of information held;
- > information about the agency or the work of the agency that is tabled in the Legislative Assembly;
- > the agency's policy documents;
- > budgetary papers including details of appropriations;
- > information about government grants made or administered by the agency;
- > the agency's disclosure log;
- > a statement of boards, councils, committees, panels and other bodies that have been established by the agency for the purpose of advising the agency or a Minister responsible for the agency;

¹ *Freedom of Information Act 2016* (ACT) s15.

² *Ibid* s14.

- > any report or recommendation prepared by a body mentioned in the point above;
- > information the agency undertakes to make available through an Agency Publication Undertaking;
- > any incoming ministerial briefs, parliamentary estimates briefs, annual reports briefs or question time briefs prepared after 31 December 2017 (note these only have to be released after they are 5 years old);
- > information declared by the Ombudsman to be Open Access information; and
- > information prescribed by regulation.

This information is available on <https://www.act.gov.au/open-access>.

Each ACT Government agency 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 agency you think may hold the documents relevant to your request. Each agency has an Information Officer who can assist you in making your request. You should also check if the information you seek is publicly available on ACT Government websites.

Note a request for information that is usually available for purchase may be refused.

For more information on how you can access documents held by the Chief Minister, Treasury, and Economic Development Directorate (CMTEDD), contact the [CMTEDD FOI Information Officer](#).

DOCUMENTS AVAILABLE THROUGH INFORMAL REQUESTS

The Directorate may be able to release to you the documents you seek without requiring you to submit a formal FOI application. Some documents can be provided through informal requests, which is a much less formal process enabling the relevant business area of the Directorate to liaise directly with you to access records. Sometimes seeking access this way can get you the information you want more quickly or at a lower cost.

DOCUMENTS CONTAINING YOUR PERSONAL INFORMATION

Under the provisions of the [Information Privacy Act 2014](#) (the IPA) access must be given to your personal information that we hold, if requested by you. Personal Information for the purposes of the IPA means:

- a) information or an opinion about an identified individual, or an individual who is reasonably identifiable—
 - i. whether the information or opinion is true or not; and
 - ii. whether the information or opinion is recorded in a material form or not; but
- b) does not include personal health information about the individual (see below).

For example, current or former employees can ask to access their personnel records. Where you want to access documents containing information about your own personal affairs, the Directorate may ask for proof of your identity.

If, after receiving the documents, you believe the information they contain to be incomplete, incorrect, out-of-date or misleading, you have the right to ask for correction under Territory Privacy Principle 13 of the IPA. You can request correction be made by altering the record, adding an appropriate annotation, or both.

WHAT DOCUMENTS CANNOT BE REQUESTED IN AN FOI ACCESS APPLICATION?

DOCUMENTS CONTAINING YOUR HEALTH INFORMATION

Health records cannot be requested under the FOI Act, but must be requested under the [Health Records \(Privacy and Access\) Act 1997](#) (the HRA).

A health record for the purposes of the HRA means any record, or part of a record:

- a) held by a health service provider and containing personal information; or
- b) containing personal health information.

“Personal information” includes any information about a consumer where the identity of the consumer is apparent, and “personal health information” includes personal information relating to the health, an illness or a disability of the consumer, or collected by a health service provider in relation to the health, an illness or a disability of the consumer.

DOCUMENTS AVAILABLE FOR RELEASE UNDER PART 3 OF THE TERRITORY RECORDS ACT

Part 3 of the [Territory Records Act 2002](#) provides for the records that are over twenty years old at Canberra Day to be open to public access.

Where the Director Territory Records has made a declaration that Part 3 does not apply to a record or group of records, a FOI request can be made in relation to those documents excluded from Part 3.

HOW DO I MAKE AN FOI APPLICATION TO ACCESS CMTEDD DOCUMENTS?

Requests can be made by completing the Online Application Form or by emailing, posting, faxing or delivering your request to the FOI Information Officer. Please include in your request that you wish to apply for access under the FOI Act and include sufficient detail for the Directorate to be able identify the information applied for.

The application must include either an email or postal address for the information from the Directorate to be sent to. Additionally if the request is for personal information the application must include evidence of the identity of the applicant, or where the information is requested by an agent acting for the applicant, evidence of the agent's authorisation to act and evidence of the applicant's identity.

Requests must be made in writing, but you may contact the CMTEDD FOI Information Officer for assistance on 620 77754.

The FOI Information Officer
Chief Minister, Treasury and Economic Development Directorate

Email to: CMTEDDfoi@act.gov.au

Post to: GPO Box 158
CANBERRA ACT 2601

Fax to: +61 2 6207 5886

Deliver to: Canberra Nara Centre
1 Constitution Avenue
CANBERRA ACT

WHAT MUST THE DIRECTORATE DO WHEN IT GETS MY REQUEST?

The Directorate must:

- > inform you (in writing) within 10 working days after receiving the application that it has received the request;
- > progress action on a response as soon as possible;
- > as soon as possible, give you an estimate of the charges if any are applicable (see next section below);
- > communicate to you about any difficulties/ delays in processing your request; and
- > provide you with a detailed decision on access to the information within 20 working days unless an extension has been granted. Where the Directorate has to consult a third party, the time in which it is required to provide you a decision is be extended by 15 working days. The Directorate will notify you if consultation is required.

HOW MUCH WILL IT COST ME?

APPLICATION FEE

There is no application fee for FOI requests to ACT Government directorates.

PROCESSING CHARGES

Processing charges may apply for requests. In order to avoid unnecessary charges, please consult with the FOI Information Officer to ensure you are requesting only the documents you need. If charges are imposed, they will not apply to the first 50 pages provided.

Charges may apply for printing and postage of documents, provision of documents on electronic storage media, transcription of recordings or shorthand and retrieval and collation of information using equipment not usually available to the Directorate. The charges are set in accordance with the Freedom of Information (Fees) Determination published on the ACT Legislation Register.

FEE WAIVER

An applicant may apply for a fee waiver if:

- > the information sought was previously publicly available but is no longer publicly available; or
- > the information requested is of special benefit to the public; or
- > the applicant is a concession holder and demonstrates a material connection with the information requested; or
- > the applicant is a not for profit organisation and the request relates to activities or purposes of the organisation; or
- > the applicant is a Member of the Legislative Assembly.

HOW WILL THE DOCUMENTS BE GIVEN TO ME?

The Directorate can let you view the documents or give you a copy. In some cases, another method may be more appropriate (e.g. listening to a recording). If copies are not to be sent to you, the Directorate will let you know how, when, and where you can access them.

Please indicate your access preference when making your FOI request. Generally, you will be given access in the method requested.

CAN I ACCESS ALL OFFICIAL DOCUMENTS?

No. The Act sets out certain types of documents where release is taken to be contrary to the public interest unless the information identifies corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law. This includes:

- > information the disclosure of which would be contempt of a court or Legislative Assembly;
- > information subject to legal professional privilege;
- > information disclosure of which is prohibited under law;

- > sensitive information the disclosure of which would involve an unreasonable disclosure of sensitive information about any individual;
- > Cabinet information in some circumstances;
- > identities of people making disclosures under the *Public Interest Disclosure Act 2012* or the *Children and Young People Act 2008*;
- > information relating to requests to cost election commitments;
- > information in electoral rolls;
- > National, Territory or State security information; and
- > law enforcement or public safety information.

The release of other documents is considered based on the public interest test taking into account both factors favouring disclosure and nondisclosure. 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.

REFUSAL TO DEAL WITH APPLICATIONS

The Directorate can refuse to deal with an application on a number of grounds, including:

- > dealing with the request would unreasonably divert the Directorate's resources from its normal functions;
- > the application is frivolous or vexatious;
- > the application involves an abuse of process;
- > the information is already available to the applicant; or
- > an application was made for the same information in the previous twelve months and refused, and the relevant public interest factors have not changed.

DELETIONS

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, or the release of some of the information is contrary to the public interest, this material may be deleted from the documentation. Also, where a document contains only components of relevant information, irrelevant information may be deleted.

CAN ANYONE ELSE ACCESS THE DOCUMENTS THAT ARE GIVEN TO ME?

Information provided to an applicant through an FOI request is published on the Directorate's [Disclosure Log](#) between three and ten working days after it has been sent to the applicant. Note applications for personal information are not published.

WHAT AVENUES FOR REVIEW DO I HAVE?

If you are dissatisfied with the information supplied, you can apply to the Ombudsman for a review of the decision. You also have a legal right to appeal if the Directorate does not inform you what decisions have been made on your request.

A participant in an Ombudsman review may apply to ACAT for a review of the Ombudsman's decision.

OMBUDSMAN REVIEW

The ACT Ombudsman has the power to investigate the Directorate's actions under the Act, including decisions, delays, and refusal or failure to act. The Ombudsman can confirm a decision, vary a decision, or set aside a decision and make a substitute decision.

The contact details for the ACT Ombudsman are:

ACT Ombudsman

GPO Box 442

CANBERRA ACT 2601

Complaints: 1300 362 072

Email: actfoi@ombudsman.gov.au

Website: <http://ombudsman.act.gov.au/freedom-of-information>

ACAT REVIEW

The ACAT can review a decision of the Ombudsman at the request of a participant in the Ombudsman review. 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>

If you think the ACAT has made a mistake of law in its decision you can appeal to the ACT Supreme Court.

WHAT ABOUT DELAYS?

The Directorate must inform you of its decision within:

- > 20 working days in the case of a request to access a document unless an extension has been granted by either the applicant or the Ombudsman (and an additional 15 working days if a consultation period applies); and
- > 20 working days in the case of a request to amend your personal records.

If the Directorate does not respond within the time limit, you can appeal to the Ombudsman.

WHAT WILL IT COST ME TO APPEAL?

No fees are payable for Ombudsman review, with any mediation cost generally be paid by the Directorate, except those costs incurred by the applicant or other participant. 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.



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