

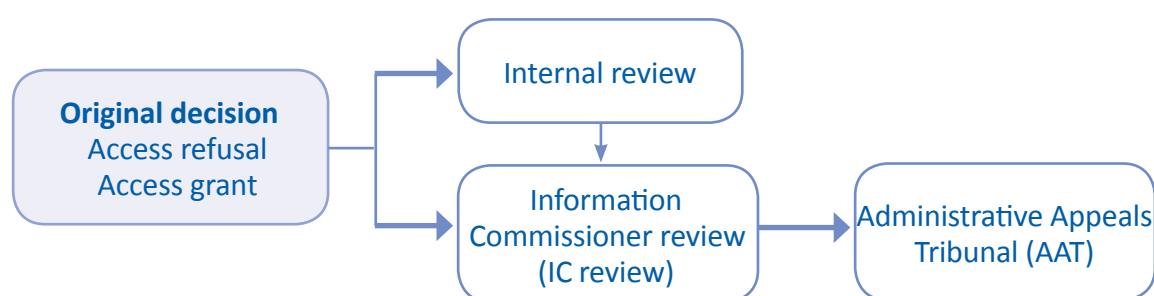


Freedom of Information

September 2011

Review of decisions made under the *Freedom of Information Act 1982*

This guidance material sets out the merit review framework for access refusal and access grant decisions made under the *Freedom of Information Act 1982* (FOI Act). You should refer to the FOI Guidelines: Part 3 (*Processing requests for access*), Part 9 (*Internal agency review of decisions*) and Part 10 (*Review by the Information Commissioner*) for further details.



Key principles

Original decision

An access refusal decision is a decision:

- to refuse, defer or not actually give access or to give access to a qualified person (s 53A(a)–(d)(f))
- regarding charges (s 53A(e))
- to refuse to amend or annotate a personal record (s 53A(g) and (h)).

The person who made the FOI request (the FOI applicant) may apply for review of an access refusal decision (s 54(2)).

An access grant decision is a decision to grant access to a document where there is a requirement to consult with a State under s 26A, Norfolk Island under s 26AA, a person or organisation under s 27, or an individual or legal personal representative of a deceased person under s 27A. An affected third party (defined in s 53C) may apply for review of an access grant decision (s 54A(2)).

Internal review or IC review

A person can apply for either internal review or IC review of an agency's access refusal or access grant decision, or IC review of a minister's access refusal or access grant decision. There is no fee or charge applying to either internal or IC review. The Information Commissioner considers that it is usually better for a person to seek internal review before applying for IC review, so that the agency can take a fresh look at its original decision.

Internal review

An application for internal review must be in writing (which includes an email or fax), and must be made within 30 calendar days after the person was notified of an agency's decision. Internal review is not available if the decision was made by a minister or personally by the principal officer of an agency. In both situations, a person can apply directly for IC review. If dissatisfied with an internal review decision, the person can then apply for IC review of that decision.

IC review

The Information Commissioner can review:

- an 'access refusal decision' (s 54L(2)(a))
- an 'access grant decision' (s 54M(2)(a))
- a refusal to extend the period for applying for internal review under s 54B (s 54L(2)(c))
- an agency internal review decision made under s 54C (ss 54L(2)(b) and 54M(2)(b)).

The Information Commissioner may also review decisions that are deemed to have been made by an agency or minister where the statutory timeframe was not met. This may happen at first instance (following a request for access to information (s 15AC) or for amendment to a personal record (s 51DA)), or following an application for internal review (where the original decision is taken to have been affirmed under s 54D).

An application for IC review must be made within 60 days of notice being given of an access refusal decision (s 54S(1)), or 30 days of notice being given of an access grant decision (s 54S(2)). A person may apply to the Information Commissioner for an extension of time for making an IC review application (s 54T(1)).

Administrative Appeals Tribunal

A person can apply to the AAT for review of:

- the Information Commissioner's decision to affirm, vary or set aside a decision after the Information Commissioner has undertaken a review (s 57A(1)(a))
- the agency's or minister's decision where the Information Commissioner has decided not to undertake a review on the basis that it is desirable that the AAT undertakes the review (s 57A(1)(b))
- the Information Commissioner's declaration of the person as a vexatious applicant (s 89N).

A person cannot apply to the AAT for review of the Information Commissioner's decision not to undertake or continue an IC review.

An application to the AAT must be made within 28 days after the day on which the person is given the Information Commissioner's decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*).

For further information

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