



## Fact Sheet

# Freedom of Information in the ACT

## What is Freedom of Information?

The [Freedom of Information Act 2016 \(ACT\)](#) (FOI Act) allows you to access government information held by an agency, or Minister in the ACT. Getting access to government-held information is an important way for you to properly participate in government processes and improved decision-making and to hold the government accountable to the public. This fact sheet contains information about how you can access information in the ACT using the *FOI Act*.

## What information can I access under the *FOI Act*?

[Section 7](#) of the *FOI Act* gives you the right to access government information. Government information is information held by an agency or Minister, except for information that relates to a Minister's personal activities, political activities, or created or received by a Minister in their role as a member of the Legislative Assembly ([section 14](#)). [Section 15](#) sets out an exhaustive list of what is defined as an "agency".

## Can the government refuse to give me the requested information?

Yes. When reviewing an application to access information under the FOI Act, the agency or Minister must decide whether disclosure of this information would, on balance, be contrary to the public interest ([section 16](#)). [Schedule 1](#) of the FOI Act sets out information disclosure which is taken to be contrary to the public interest, including:

- information which is against the law to disclose, or subject to legal professional privilege;
- sensitive information about a person;
- some types of Cabinet information;
- national, territory or state security information;
- law enforcement or public safety information.

[Section 17](#) sets out the "public interest test", and [Schedule 2](#) outlines factors to be considered when deciding the public interest (including factors in favour, or not in favour of disclosure).

In addition to public interest considerations, the agency or Minister has a number of other considerations that they have to take into account when deciding an application. For example, they can refuse to confirm or deny that particular information is held because the information is contrary to the public interest information and, to do so could reasonably be expected to endanger someone's life, safety or human rights ([section 35\(e\)](#)). They must also decide whether or not information to be disclosed concerns another party, and consult with that other party before giving access ([section 38](#)).



The government can also refuse to deal with your application on a number of grounds ([section 43](#)) including:

- dealing with the request would unreasonably divert government resources;
- the application is frivolous or vexatious;
- the application involves an abuse of process;
- the information is already available;
- an application was refused for the same information in the previous twelve months and circumstances have not changed.

If the government decides not to give you access to the document you asked for, it must give you written reasons for the decision.

## How do I request documents under FOI laws?

To lodge an FOI application, you must apply in writing to the relevant agency or Minister by either:

- filling in the approved form which is available from the relevant department; or
- writing a letter stating you wish to apply for access to information under the *FOI Act*.

Your request should ([section 30](#)):

- identify the documents that you are looking for (in enough detail that the agency or Minister will be able to find them);
- provide your contact details, including your postal or email address;
- if the information relates to you, evidence of your identity, or if you are an agent acting on behalf of the person making the application, evidence you are authorised as agent, and evidence of your identity.

You may also include a statement explaining why giving the information to you is in the public interest.

If your application does not follow these requirements, the agency or Minister must take reasonable steps to help you make your application comply ([section 31](#)).

## How much will it cost?

You may be charged processing fees. These fees are in the [Freedom of Information \(Fees\) Determination 2018](#). The government agency or Minister may give you an estimate of the fees ([section 106](#)).

You can be asked to have fees waived if ([section 107](#)):

- the information you requested has special public benefit;
- the information was previously publicly available but is no longer publicly available;



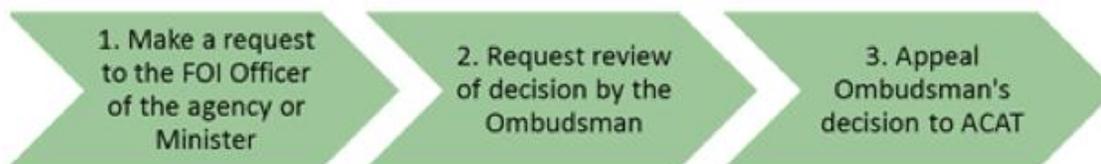
- you are a concession card holder and demonstrate a connection to the information;
- you are from a not for profit organisation and the application relates to your activities or purposes;
- you are a member of the Legislative Assembly.

## What happens after I have made my FOI request?

The government agency or Minister that receives your FOI request:

- must tell you within 10 working days that it has received your request ([section 32](#));
- must provide you with a detailed decision within 20 working days, unless an extension has been granted. If a third party needs to be consulted, it can take an additional 15 working days to make the decision ([section 40](#)). If no decision is made within this time, the decision is taken to be a refusal to give access ([section 39](#)).

All written documents released under FOI are publically available online (unless they are exempt for privacy, confidentiality or copyright reasons). You can see these on the [Open Government website](#). The agency or Minister is also required to keep a disclosure log which lists FOI requests that it has received ([section 28](#)).



(FOI Application and Review Process)

## How do I appeal a refusal to give me information?

### Ombudsman Review

If you are unhappy with the decision of the agency or Minister, you can ask the Ombudsman for a review. The Ombudsman has the power to ([section 82](#)):

- confirm a decision;
- vary a decision;
- set aside a decision and make a substitute decision;
- refer you and the agency or Minister to mediation ([section 81](#)).

You must apply for an Ombudsman review within 20 working days after you have been given notice of the decision, or the day the decision was taken to be made (for a “deemed decision”, where a decision was not made in time) ([section 74](#)). The Ombudsman then has 30 working days to make a decision ([section 82](#)).



## ACAT Review

The ACT Civil and Administrative Tribunal (ACAT) is an independent body with jurisdiction to hear and determine particular disputes in the ACT. You can challenge the decision of the Ombudsman in the ACAT. Generally, the parties to the ACAT review are the participants in the Ombudsman review and the decision maker for the original FOI decision ([section 84](#)). You must apply for the ACAT review within 20 working days after the Ombudsman's decision was published or a longer period if granted by ACAT. More information about ACAT, including application fees, can be found at [www.acat.act.gov.au](http://www.acat.act.gov.au) under Administrative Review.

## What documents can I access without freedom of information?

Under the FOI Act, the Directorate must make available a range of documents through the ACT Government's [Open Access information site](#) including:

- functional information;
- information about the work of the agency tabled in the Legislative Assembly;
- the Directorate's policy documents;
- budget papers;
- information on grants made or administered by the agency.

You can also ask the government agency or Minister directly for the information before you make the FOI request.

## Where can I go to for help with my FOI request?

For more information, see the Chief Minister, Treasury and Economic Development Directorate [website](#). The ACT Government has published a [Guide on FOI Requests](#) and a [Guide on FOI Charging](#).

**Disclaimer:** The law described in this fact sheet is current at 30 June 2018. This fact sheet has been designed to give readers plain English background information in planning and environmental law in the ACT. It is brief, for general information purposes only and does not replace the need for professional legal advice in individual cases. To request free initial legal advice, please contact us on (02) 6243 3460. While every effort has been made to ensure the information is accurate, the EDO ACT does not accept any responsibility for any loss or damage resulting from any error in this fact sheet, or reliance or use of this work. Duplication and reproduction of the information is permitted with acknowledgment of the EDO ACT. This fact sheet was produced with the assistance of funds made available by the ACT Government through the Justice and Community Services Directorate.