



ENVIRONMENTAL DEFENDERS OFFICE (ACT)

Freedom of Information

March 2010 - Fact Sheet 2

*There are many public information sources that might be of assistance when taking action to protect the environment. The **Freedom of Information Act 1989 (ACT)** provides some legal rights to information regarding ACT government decisions.*

How do I access information?

Getting access to information such as specialist reports and advice which governments have relied on to make environmental decisions can be important when taking action to protect the environment. Sometimes the information you require about a decision made by a government department or Minister may be available for a fee, or the department or agency may be willing to provide the information. You should first approach the relevant department or Minister by writing or email to determine whether information can be obtained without an Freedom of Information (FOI) request. Follow up with a phone call. As an alternative you can approach a Member of the Legislative Assembly to ask a question in the Assembly or invoke other procedures of the Assembly.

When should you use Freedom of Information (FOI)?

If the documents are still not supplied you might wish to consider making an FOI application. The *Freedom of Information Act 1989 (ACT)* (FOI Act) creates a legally enforceable right of access to documents in the possession of ACT Ministers, Government agencies and some statutory authorities.

Freedom of Information was introduced in order to increase transparency in government decision making, and to improve accountability of administrative decision making. The FOI Act states that its principal object is to “extend as far as possible the right of the Australian community and, in particular, the citizens of the Territory, to access to information in the possession of the Territory” [s.2].

As well as giving a legal right to access certain documents the FOI Act also gives the public access to information about the organisation and operations of departments and agencies, including procedures used in making decisions and their arrangements for public participation.

What documents are available under FOI?

The types of documents accessible to the public under the FOI Act include: emails, procedure manuals; guidelines; files; reports; computer printouts; maps; plans; photographs; tape recordings; and films or videotapes. It may also be possible to peruse or purchase copies of manuals, or parts thereof, and guidelines used by government agencies for making decisions [s.8].

How to make an FOI application?

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

- filling in the form which is available from the relevant department; or
- writing a letter stating you wish to apply for access under the FOI Act [s.14(1)].

Key requirements to put into an FOI request include:

- sufficient information to enable an officer of the agency or the Minister to process the request;
- identify the document or documents you want to access as clearly as possible, for example, by giving the date the document was created or by describing in detail the matter in which



- you are interested; and
- your contact telephone number and address [s.14(2)].

If you are having difficulties making the request, you should contact the relevant agency, which is obliged to assist [s.14(3)]. Each government department has FOI officers to assist with requests for information.

If the request has been made to the wrong agency or Minister, the agency or Minister is required to assist the applicant to direct their request to the appropriate body [s.14(4)].

If you are not sure what documents are held by the Department you could ask or use the FOI process to request a Departmental file index, and then later request documents contained in files that have subject headings which are relevant to your interests.

How much does an FOI application cost?

There are currently no application fees for FOI requests. These were abolished in 2001. Processing and access charges may still be levied, for work in excess of 10 hours processing time and / or two hundred A4 photocopies [clause 2(3) and item 2 of Part II of the Schedule of the *Ht ggf qo "qhl' Kplqt o c vkqp "Hggw'cpf 'Ej cti gu+F gvgto kpc vkqp '3; ; 7]*.

If an agency or Minister decides that the applicant must pay a charge, the agency or Minister shall notify the applicant of the charge and provide a statement explaining how the charge has been calculated [s.28]. You can apply to have the charge waived or reduced. Charges can be waived or reduced on the grounds of financial hardship or public interest (s.29(3)). A deposit may be required before the request is processed [clause 9 of the *Freedom of Information (Fees and Charges) Determination 1995]*.

Which documents are exempt from release?

Whilst the public has a right to information, some information is subject to exemptions. Exemptions which may apply:

- competitive commercial activities of Territory owned corporations or a subsidiary [s.6(1)];
- some requests concerning health records [s.6(2)];
- documents predating 1977 that do not contain personal information and are not required to understand a document to which you have legal access [s.11];
- where the work involved in an FOI request involves an unreasonable diversion of resources [s.23];
- damage relations between the ACT and the Commonwealth or other states [s.34];
- certain executive documents [s.35];
- internal working documents the disclosure of which would be contrary to the public interest [s.36];
- public safety including law enforcement (police) activities [s.37];
- where disclosure could prejudice the security of the ACT, the Commonwealth or any State [s.37A];
- secrecy provisions of enactments apply [s.38];
- a substantial adverse effect on financial or property interests of the Territory [s.39];
- certain operations of agencies [s.40];
- personal privacy [s.41];
- legal professional privilege [s.42];
- business affairs, such as trade secrets [s.43];
- substantial adverse effect on the ACT's economy [s.44];
- containing material obtained in confidence [s.45];
- disclosure of which would be contempt of Legislative Assembly or a court [s.46];
- arising out of companies and securities legislation [s.47]; and
- electoral rolls and related documents [s.47A].

Agencies and ministers are not required to provide information concerning the existence or non-existence of a document where that information would itself be considered an exempt document because of public safety or security reasons under sections 34, 37(1) or 37A [s.24]. If a document you request contains some exempt information you can still access the document with the exempt information deleted [s.21].

How long will it take for my request to be dealt with?

The department or agency must acknowledge receipt of your request within 14 days. Further, the responding agency must notify you of its decision on access within 30 days (although this may be extended to 60 days in certain cases) and give you notice of any charges that are payable [ss.18 and 28].

If you are granted access, you will receive a copy of the document/s or you will have the right to view the document at the department or agency. If you are required to pay any processing and access charges these must be paid before you are given access to the documents [clause 8 of the *Freedom of Information (Fees and Charges) Determination 1995*].

The document you see may contain sections that have been deleted or blacked out, for example, information about another person may be deleted. If access is refused, you must be given a statement setting out the reasons why access was refused [s.25].

Can I appeal decisions?

If you are unhappy about a decision that denies access to information or a decision relating to charges, for example a decision to impose a charge, the amount of a charge or a refusal to remit the charge, you can ask the department within 28 days of being notified of the original decision for an internal review [s.59]. You will be notified of the reviewed decision within 14 days and, if access is still denied or charges are still imposed or not reduced, you will be given reasons why access has been denied or why charges are to be imposed or not reduced. If still unhappy, you can apply to the ACT Civil and Administrative Tribunal (ACAT) for merits review [s.60]. If you are unhappy about how your request has been handled, you can make a complaint to the Ombudsman [s. 54].

Sample Fol letter

The Conservator

*Department of the Environment, Climate Change,
Energy and Water*

Dear Freedom of Information Coordinator

This is a request for access to information pursuant to the Freedom of Information Act 1989 (ACT).

We seek access to documents relating to applications for trees to be placed on the ACT Tree Register and any documents relating to the consideration of these applications.

We are seeking documents for the last three years: 1 July 2007 - 30 June 2010.

The term 'document' in this request is defined as broadly as in the Act and includes reference to reports, communications, photos, e-mails, briefings, minutes, notes, ministerials, and correspondence. The request does not include documents that are already widely within the public domain.

We request that any charges be waived on the basis of the broad public interest in this matter, pursuant to s.29(3)(c) of the Act.

It is in the public interest of the ACT community to understand why no trees have been listed on the tree register.

If you have any queries regarding this request please contact the Solicitor at the EDO office on (02) 6243 3460.

Yours sincerely

Disclaimer

The law described in this Fact Sheet is current at 31 March 2010.

The ACT EDO Fact Sheets have been designed to give readers plain English background knowledge to planning and environmental decision making in the ACT. They cannot replace the need for professional legal advice in individual cases. Please contact us as we may be able to provide additional advice.

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