



Freedom of Information in WA

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet, or reliance or use of this work. Duplication and reproduction of the information is permitted with acknowledgement of the EDO.

This factsheet was last updated in September 2021

Overview

Environmental groups and individuals with environmental concerns often need to obtain documents relating to governmental decision-making.

This Fact Sheet provides an overview of the [Freedom of Information Act 1992 \(WA\)](#) (**the State Act**), which relates to information held by State Government departments and authorities. It includes practical suggestions and advice as to how the Acts can be used to obtain government information.

Freedom of Information

Which information is accessible?

The State Act gives every person the right to apply for access to documents held by government departments, local authorities, statutory authorities and Government Ministers. Information may be stored in a number of formats, all of which are defined as 'documents' under the State Act. This may include paper documents, maps, plans, drawings or photographs, electronic records and sound and video recordings.¹ All documents held by agencies covered by the State Act are accessible, unless the document contains exempt information (see [Are there documents I cannot access?](#)).

How do I apply?

If you require access to a document, apply to the agency that you think has that document. Agencies have a legal duty to help you locate the correct agency (if it is not

¹ [Freedom of Information Act 1992 \(WA\)](#) s 9 ('FOI Act').

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.

their agency),² and to help you comply with the requirements for a correct Freedom of Information (**FOI**) application.³

An application must:

- be in writing (including by email);
- give enough information to enable the requested document to be identified;
- give an address in Australia to which notices can be sent;
- give any other information or details required under the regulations, and;
- be sent to an office of the agency with any application fee payable under the regulations.⁴

An application may request a particular mode of access, for example, an opportunity to inspect the document, provision of a copy of the document, or provision of sounds or images to be heard or viewed.⁵ See [Sample Application Letter](#) below.

Applications under both the State Act and the [Freedom of Information Act 1982 \(Cth\)](#) by unincorporated associations should be made in the name of one of the members, as the association has no separate legal existence.

Describing the documents

In order to get the documents that you are looking for, document must be described clearly. If you can be very specific about the documents that you are looking for, you are more likely to receive a quick response, and the agency is less likely to charge you additional fees.

A clearly described request should, if possible, include names, dates, locations, subject matter and any other information that will assist in identifying the documents. Although optional, specifying your reason for access may also assist.

Objectives for obtaining documents

Think about what your objective is in obtaining the documents. Do you want to check whether a subdivision is being developed consistently with the terms of its planning approval?

In this case, you may only need to see a copy of the development application, the development approval, any management plans submitted after approval and any

² FOI Act s 15.

³ Ibid s 20(1).

⁴ Ibid s 12.

⁵ Ibid ss 12(2), 27.

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.

monitoring reports or correspondence related to enforcement action on the local government file.

Your request is likely to be processed more quickly if you ask for these documents specifically, rather than asking for the entire file for the development.

Describing documents where ‘all documents’ required

On the other hand, if you are concerned that a local government may not have gone through a correct decision-making process in approving a development, you may need to ask for all documents that refer or relate to the development.

However, even a request such as this could be narrowed by identifying the documents that you are *not* interested in, for example documents that have already been made publicly available, objectors’ submissions or documents produced after the development was approved.

Refusal of application

The agency may refuse to deal with a request if it would divert a substantial and unreasonable portion of the agency’s resources away from its other operations. In this situation, the agency must help you to change the application to reduce the amount of work needed to deal with it. If, after help has been given, the agency still refuses to deal with the application, it must give you written notice of the refusal immediately. This notice must give the reasons for the refusal, the findings on any material questions of fact underlying those reasons and the material on which those factual findings are based. It must also give details of the rights of review under the State Act and the procedure to be followed to exercise those rights.⁶

How much will it cost?

There is no application fee if you are only seeking access to personal information relating to yourself.⁷ Personal information is defined as any information or opinion, true or not, about an individual that can identify or reasonably identify that person.⁸ The agency will generally require you to provide proof of identity before processing an application for access to personal information about yourself.⁹

For other requests, the application fee is \$30.¹⁰ In addition to the application fee, the agency may charge a rate of \$30 per hour for time taken by staff locating documents, photocopying documents, time taken to transcribe from tape, film or computer or

⁶ FOI Act s 20.

⁷ Ibid ss 16(1)(d).

⁸ Ibid s 9.

⁹ Ibid s 29.

¹⁰ [Freedom of Information Regulations 1993 \(WA\)](#) Sch 1 cl 1 (‘FOI Regulations’)

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.

providing supervised access by staff.¹¹The agency can also require you to pay the actual cost incurred by the agency for copying and delivering documents.

If the extra charges listed above are likely to exceed \$25, the agency is required to contact you, before expenses are incurred, with an estimate of charges and ask whether you would like to proceed with the application.¹² In some cases, the agency will require an advance deposit (in addition to the application fee) before they process the request. These deposits generally should not exceed 25% of the estimated charges.¹³

Financially disadvantaged people and not-for-profit conservation groups with limited funds may be able to obtain a discount of the total charges other than the application fee. This is at the discretion of the agency. Holders of a valid pensioner concession card are entitled to a 25% discount.

If an estimated charge seems unreasonable, you may apply for an ‘internal review’ of the charge (see below).¹⁴

How and when will the agency respond?

Agencies must assess the request and give a written response within 45 days, advising whether the request is approved or refused.¹⁵ If the request to access documents is refused, or only partial access is given, the agency must give you written reasons for the decision.¹⁶ If the request is approved, it is good practice for the agency to also provide you with a schedule of documents falling within the terms of your request that briefly describes the nature of each document, whether it has been withheld or edited, and any exemptions claimed by the agency.

Are there documents I cannot access?

Access to documents may be denied where the document contains exempt information.¹⁷ There are sixteen categories of exempt information covered in Schedule 1 of the State Act. The most common categories are as follows:

Personal information¹⁸

A request may be refused when disclosure would reveal material personal information about an individual other than the applicant. However, access will be given when the

¹¹ FOI Regulations sch 1 cl 2.

¹² FOI Act s 17(3)

¹³ FOI Regulations sch 1 cl 3.

¹⁴ FOI Act (WA) ss39(2)(a)(vi).

¹⁵ Ibid s 13(3).

¹⁶ Ibid ss 13(1)(b), s 30.

¹⁷ Ibid s 23(1)(a).

¹⁸ FOI Regulations sch 1 cl 3.

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.

applicant has evidence showing that the individual concerned consents to the disclosure or if disclosure would, on balance, be in the public interest.

The exemption for personal information does not apply to the names and positions of agency officers and things done by them in the course of their official work.

Trade secrets, commercial or business information¹⁹

Information is exempt if it would reveal:

- trade secrets;
- information that has a commercial value to a person, where disclosure could reasonably destroy or diminish that commercial value; or
- information about business, professional, commercial or financial affairs, where disclosure could reasonably have an adverse effect on those affairs or prejudice the future supply of that kind of information to the agency and disclosure is not in the public interest.

However, information is not exempt if the person concerned consents to the disclosure or if the disclosure would, on balance, be in the public interest. The information is also not exempt merely because the disclosure would reveal information about the business, professional, commercial, or financial affairs of the applicant or an agency.

Cabinet and Executive Council documents²⁰

The documents produced by the Government in Cabinet or Executive Council will be exempt if they reveal deliberations or decisions of Cabinet, a committee (or subcommittee) of Cabinet, or Executive Council. This may include agendas, minutes, policy options or recommendations for possible submissions, communication between Ministers relating to making a Government decision or formulating Government policy and briefs to a Minister on matters prepared for possible submission to Cabinet.

However, these documents may be accessible if they only contain information that is factual, statistical, scientific or technical.

Documents may also be accessed if they came into existence before 12 December 1992, or, if they came into existence after that date and are at least 10 years old.

¹⁹ Ibid sch 1 cl 4.

²⁰ Ibid sch 1 cl 1.

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.

Legal professional privilege²¹

Information is exempt from disclosure if it is subject to legal professional privilege.

Deliberative process of an agency²²

Information is exempt if its disclosure would reveal any opinion, advice, recommendation, consultation or deliberation of the Government, a Minister or an agency and would, on balance, be contrary to the public interest.

However, access is allowed for information that appears in an internal manual of an agency, is factual or statistical, or has been in existence for more than 10 years.

Damage to intergovernmental relations²³

Sensitive, high-level documents passing between the Western Australian government and other governments including the Commonwealth Government, another State, Territory or foreign country or State may be exempted by the agency to protect relations between those governments or to protect information of a confidential nature that was communicated in confidence to the agency. However, this information is not exempt if its disclosure would be in the public interest.

Law enforcement, public safety and property security²⁴

Documents may be exempt if their disclosure would:

- impair or reduce the effectiveness of any procedures for dealing with any breach of the law;
- prejudice an investigation into any breach of the law, whether or not prosecution or proceedings have resulted;
- reveal the identity of any confidential source of information relating to law enforcement or administration;
- prejudice any person's right to a fair trial; or
- endanger the life or safety of any person, endanger the security of property, prejudice measures for protecting public safety, facilitate the escape of any person from lawful custody or endanger the security of any prison.

This includes documents produced by the Bureau of Criminal Intelligence, Protective Services Unit, Witness Security Unit or Internal Affairs Unit of the Police Force of

²¹ FOI Regulations sch 1 cl 7.

²² Ibid sch 1 cl 6.

²³ Ibid sch 1 cl 2.

²⁴ Ibid sch 1 cl 5.

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.

Western Australia, the Internal Investigations Unit of Corrective Services or a Commonwealth intelligence or security agency.

However, a document is not exempt if it consists merely of information revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law, a general outline of the structure of a programme adopted by an agency for addressing breaches of law or, a report on the degree of success achieved in any such programme and disclosure would, on balance, be in the public interest.

Redaction of documents

If an application requests access to a document containing exempt matter, and it is practicable for the agency to give access to a copy of the document with the exempt matter redacted, then the agency must give access to that redacted document.²⁵ An agency cannot give access to a document containing personal information about another person without taking reasonable steps to consult with that person as to whether the document contains exempt information.²⁶ The requirement to consult with the third party is removed if the personal information is redacted.²⁷

An agency will consult all third parties before releasing any information about that third party. In this context, third party information means information about entities other than the access applicant and the agency providing the information. To reduce this consultation effort, an agency will sometimes ask you to reduce the scope of your request by excluding all third party information.

If you agree to this, then the agency may delete a great deal of information which is not actually exempt, such as non-sensitive information about the business affairs of a developer applying for environmental approval, and the names of agency officers. In these circumstances, the agency's editing decisions may not be reviewable. If you think there is a risk that important information may be lost in this process, you may decide not to agree to reduce the scope of the request.

What if I disagree with the decision?

You have the right to apply for internal review of an agency's decision if the agency:

- refuses to deal with the application you submitted;
- denies you access to some or all requested documents;

²⁵ FOI Act s 24.

²⁶ Ibid s 32.

²⁷ Ibid s 32(6).

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.

- provides access to redacted documents, and you want access to the redacted sections;
- has deferred access to a document;
- has charged you an amount you consider to be unreasonable; or
- did not consult you as a third party whose information was requested by the applicant, or you disagree with a decision made by an agency regarding the documents.²⁸

If the initial decision was made by the principal officer of the agency, then internal review will not be available.²⁹ In this circumstance, you may apply to the Information Commissioner for an external review of an agency's decision.³⁰

You must apply for internal review in writing within 30 days of receiving the notice of the agency's decision.³¹ Your application needs to be in writing, include particulars of the decision and your postal address and be lodged at an office of the agency – see [Sample internal review letter](#).³² There are no fees or charges for an internal review.³³

Internal review will be carried out by someone from the agency who is either the same level of seniority or more senior than the original decision maker. The agency has 15 days from the day the review application is lodged to confirm, vary or reverse the decision under review.³⁴ If the agency does not notify the applicant of its decision within 15 days, the agency is deemed to have confirmed the decision under review.³⁵

If you are dissatisfied with the results of the internal review, you can make a complaint to the Information Commissioner and request an external review.³⁶ The complaint should be in writing and include particulars of the decision, an address to which notices can be sent, a copy of the agency's notice of its decision (if you received one) and be lodged at the office of the Commissioner.³⁷

A complaint to the Commissioner should be lodged within 60 days of receipt of either the internal review decision or, if internal review is not available, within 60 days of the original

²⁸ Ibid s 39.

²⁹ Ibid s 39(3).

³⁰ Ibid s 65.

³¹ Ibid s 40(2).

³² Ibid s 40(1).

³³ Ibid s 44.

³⁴ Ibid s 43.

³⁵ Ibid.

³⁶ Ibid s 65.

³⁷ FOI Act s 66; FOI Regulations s 8.

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.

decision.³⁸ However, the Commissioner has discretion to accept complaints lodged after this time period.³⁹ Complaints may also be lodged by third parties who are dissatisfied with a decision by the agency to release information about them within 30 days of being given written notice of the decision.⁴⁰

The Commissioner determines the procedure for investigating and dealing with complaints and may give directions as to the conduct of proceedings.⁴¹ These may include holding formal proceedings or hearings, directing all submissions to be made in writing or requiring parties to attend compulsory conferences.⁴²

Usually in proceedings before the Information Commissioner each party is responsible for their own legal costs (if any). However, if the Commissioner considers that one party has displayed exceptionable or unreasonable conduct, they may order that party to pay another party's costs.⁴³

Can I appeal the Commissioner's decision?

You cannot appeal against the merits of the Commissioner's decision. However, if the Commissioner makes an error of law during the hearing of the external review, you may appeal to the Supreme Court.⁴⁴

Is there an easier way to get the document?

You should always try to find out if the document you are seeking is publicly available through a particular body, or whether you are able to obtain a copy with a simple, informal request. Alternatively, politicians, local councillors or environmental groups may be able to provide you with a copy of the document.

³⁸ FOI Act s 66(2).

³⁹ Ibid s 66(4).

⁴⁰ Ibid s 66(3).

⁴¹ Ibid s 70(4).

⁴² Ibid s 70(5).

⁴³ Ibid s 84.

⁴⁴ Ibid s 85.

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.

Sample application letter

John Smith
Eucla River Action Group
3 River Road
EUCLA WA 6443

10 October 2008

Ms Jan Bloggs
Freedom of Information Officer
Department of Environmental and Conservation
The Atrium
168 St George's Terrace
PERTH WA 6000

Dear Ms Bloggs,

Freedom of Information - Eucla River Piggery, Licence No. 2114

Pursuant to the *Freedom of Information Act 1992 (WA)*, I seek access to the following documents dated between 1 January 2010 and 5 June 2012 which refer or relate to the above Piggery Licence (excluding information which has already been made publicly available):

- Correspondence between the Department and Eucla River Piggery Co;
- Correspondence between the Department and other agencies;
- Correspondence between the Department and the Minister for Environment;
- Agendas minutes and any other record of meetings between the Department and Eucla River Piggery Co and/or other agencies and/or the Minister for Environment.

My preferred method of access is to obtain copies of the above information.

I consent to the redaction of the names of third party objectors from the above documents.

I enclose the \$30.00 application fee.

If charges associated with this application are likely to exceed \$25.00, please contact me before those charges are incurred.

Yours sincerely,
John Smith

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.

Sample internal review letter

John Smith
Eucla River Action Group
3 River Road
EUCLA WA 6443

30 October 2008

Chief Executive Officer
Environment Australia
King Edward Terrace
PARKES ACT 2601

To Whom It May Concern,

Freedom of Information - Eucla River Piggery

On 10 October 2008 I applied for documents relating to the above matter.

On 28 October, I received notification from your Freedom of Information Contact Officer that access to a set of notes from that file was refused on the ground that the notes were exempt under section 43 of the *Freedom of Information Act 1992*.

Pursuant to section 54 of the Freedom of Information Act 1992, I request an internal review of this decision. The \$40 review fee is enclosed.

Yours sincerely,
John Smith

The EDO wishes to acknowledge the support of the Government of Western Australia and the Koorabup Trust in providing funding to assist updating this fact sheet.