



Accessing Government Information in Western Australia

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What is this factsheet about?

This factsheet provides information about how to access non-personal information held by public sector organisations in WA. It provides an overview of the [Freedom of Information Act 1992 \(WA\) \(FOI Act\)](#), which relates to information held by State Government departments and authorities, and Ministers.

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Overview

Obtaining information and documents held by government is often important in determining your legal rights and options or considering whether the government has made a decision according to law.

In WA, some government information and documents are publicly available. This means that they can be viewed or obtained by members of the public. Information that is freely available may be displayed on websites of government departments without any charge.

Where information and documents are not freely available, members of the public may still have legal rights to access them. To obtain information not freely available, you can:

1. Write to the government department or agency which you think holds the information and ask them to provide it to you voluntarily (alternatively, politicians, local councillors or environmental groups may be able to provide you with a copy of the document)
2. Make a formal application for government information under the FOI Act

If the information or documents you seek are held by a Commonwealth government agency, you can make an application for information under the Commonwealth [Freedom of Information Act 1982](#).

Read: EDO's factsheet on [Accessing Commonwealth government information](#)

Your right to access information from agencies

Access applications can be made to 'agencies' including a Minister, a Department (such as the Department of Water and Environmental Regulation), or a local government, regional local government or regional subsidiary.

Access applications **cannot** be made to certain agencies including the Governor, the Legislative Council or Legislative Assembly, the Auditor General and the Office of the Auditor General, or the Corruption and Crime Commission.¹

Access applications can seek 'documents' of an agency, which includes paper documents, maps, plans, diagrams or graphs, drawings or photographs, electronic records and sound and video recordings.² All documents held by an agency and covered by the FOI Act are accessible, unless a document contains exempt information.

How do I make an access application?

To access a document, you should make an application to the agency you think has that document.

An application must:³

- be in writing (including by email)
- give enough information to enable the requested documents to be identified
- give an address in Australia to which notices can be sent
- give any other information or details required under the regulations

¹ For a full list of the exempt agencies see FOI Act sch 2.

² FOI Act Glossary cl 2.

³ Ibid s 12(1).

- be sent to an office of the agency with any application fee payable under the regulations

Agencies have a legal duty to help you locate the correct agency (if it is not their agency),⁴ and help you change the application to reduce the amount of work needed to deal with it if your application would divert a substantial and unreasonable portion of the agency's resources away from its other operations.⁵

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.⁶ See [Sample Application Letter](#) below.

Applications under the FOI Act by unincorporated associations should be made in the name of one of the members, as the association has no separate legal existence.

Many government departments will have an FOI form that an applicant can use – for example, see DWER's website: [Freedom of Information application form](#).

Describing the documents

To help your application be processed quickly, you should:

- clearly describe the documents sought
- be very specific about the documents you are looking for
- include names, a date or date range, locations, subject matter and any other information that will assist in identifying the documents
- consent to exclude copies of documents which are publicly accessible or any duplicates, as well as personal information of third parties

You should think about what your objective is in obtaining the documents. For example, if you want to check whether a subdivision is being developed consistently with its planning approval, you may only need to see particular documents, such as the development application and approval, any management plans submitted after approval and any monitoring reports or correspondence related to enforcement action on the local government file.

On the other hand, if you are concerned about a government decision-making process in approving a development, you may need to ask for all documents that refer or relate to the development. You can still narrow this kind of application by identifying documents that you are *not* interested in, for example documents that have already been made publicly available, objectors' submissions, or documents produced after the approval.

⁴ FOI Act s 15(1).

⁵ Ibid s 20(1).

⁶ Ibid ss 12(2), 27.

How much will an application cost?

There is no application fee if you are only seeking access to personal information relating to yourself.⁷

For other applications, there is a fee of \$30 (**application fee**).⁸ 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, transcribing from tape, film or computer, or providing supervised access by staff.⁹ The 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.¹⁰

Financially disadvantaged people and not-for-profit conservation groups with limited funds may be able to obtain a discount of the total charges of processing an application, 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).¹¹

How and when will the agency respond?

Agencies must assess an access application and give a written response to the applicant within 45 days of the application being made, advising whether the application is approved or refused.¹² Sometimes an agency will not be able to process your application in this time and may ask for an extension.

What information is not accessible?

Access to documents may be denied where the document contains exempt matter.¹³ The most common categories of exempt matter are as follows:

Personal information¹⁴

Information is exempt if its disclosure would reveal material personal information about an individual other than the applicant. However, access will be given when the applicant has evidence showing that the individual concerned consents to the disclosure or if disclosure would, on balance, be in the public interest.

⁷ Ibid s 16(1)(d).

⁸ [Freedom of Information Regulations 1993 \(WA\)](#) Sch 1 cl 1 (**FOI Regulations**).

⁹ FOI Regulations sch 1 cl 2.

¹⁰ FOI Act s 17(3).

¹¹ FOI Act ss 39(2)(a)(vi).

¹² Ibid s 13(3).

¹³ Ibid s 23(1)(a).

¹⁴ Ibid sch 1 cl 3.

Trade secrets, commercial and business information¹⁵

Information is exempt if its disclosure would reveal:

- trade secrets
- information that has a commercial value to a person, where disclosure could reasonably destroy or diminish that commercial value
- 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.

Deliberations of Cabinet and Executive Council¹⁶

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.

Just because a document was submitted to Cabinet does not mean it is automatically exempt. An agency must show the document was prepared for the purpose of submission to Cabinet.

Further, information is not exempt if it only contains information that is factual, statistical, scientific or technical. Documents may also be accessed if they came into existence before 12 December 1992, or after that date and are at least 10 years old.

Legal professional privilege¹⁷

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

Read: EDO's factsheet on [Protecting Legal Professional Privilege](#).

¹⁵ Ibid sch 1 cl 4.

¹⁶ Ibid sch 1 cl 1.

¹⁷ Ibid sch 1 cl 7.

Deliberative process of an agency¹⁸

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, information is not exempt if it appears in an internal manual of an agency, is factual or statistical, or has been in existence for more than 10 years.

If an agency asserts documents are exempt under this exemption, they should identify the 'deliberative process' that is relevant.

Damage to intergovernmental relations¹⁹

Sensitive, high-level documents passing between the WA government and other governments, including the Commonwealth, or 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 security²⁰

Documents may be exempt if their disclosure would interfere with law enforcement, public safety and proper security, for example by impairing procedures for dealing with breaches of the law, or prejudicing an investigation into a breach of the law.

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.

Public interest

If you are applying for access to a document and you think access is in the public interest, you should explain why that is the case. In their decisions about whether documents are exempt, agencies should also be considering the public interest for and against disclosure of the documents.

Visit: The Office of the Information Commissioner's page on [FOI Exemptions](#), including in relation to the public interest.

¹⁸ Ibid sch 1 cl 6.

¹⁹ Ibid sch 1 cl 2.

²⁰ Ibid sch 1 cl 5.

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.²¹

If a person's personal information is contained in a document the subject of an access application, an agency will take reasonable steps to consult with that person, unless the personal information will be redacted.²² An agency will also consult with third parties (being entities other than the access applicant and the agency providing the information) before releasing any information about that third party.

What are my rights to seek review of access decisions?

Internal review

If you disagree with an agency's decision on your access application, you may apply to the agency for internal review of the decision.²³ This may be appropriate if the agency has:

- refused to deal with the application you submitted
- denied you access to some or all requested documents
- provided access to redacted documents, and you want access to the redacted sections
- deferred access to a document
- charged you an amount you consider to be unreasonable

You may also seek internal review of an agency's decision where you are a third party, if the agency 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.²⁴

You must apply for internal review in writing within 30 days of receiving the notice of the agency's decision.²⁵ 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](#) below.²⁶ There are no fees or charges for a request for internal review.²⁷

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.²⁸

²¹ FOI Act s 24.

²² Ibid s 32.

²³ FOI Act s 39.

²⁴ Ibid s 39(2)(b).

²⁵ Ibid s 40(2).

²⁶ Ibid s 40(1).

²⁷ Ibid s 44.

²⁸ Ibid s 41.

The agency has 15 days from the day the review application is lodged to confirm, vary or reverse the decision under review.²⁹ 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.³⁰ It is then open to the applicant to apply for external review (see below).

Visit: For guidance on what you may wish to include in an internal review application, or a complaint to the Information Commissioner (see below), see:

- [WA Office of the Information Commissioner's website](#)
- [Commonwealth Office of the Information Commissioner website](#), which has detailed information on exemptions under the Commonwealth Act, which are not identical but similar to exemptions in the WA FOI Act.

Complaint to the Information Commissioner

If the original decision was made by the principal officer of the agency (for example a Minister), or you are dissatisfied with the results of an internal review, you can make a complaint to the Information Commissioner (**Commissioner**).³¹ This is sometimes called 'external review'.

A complaint to the Commissioner must be in writing, include particulars of the decision to which the complaint relates, give your postal address, and be lodged at the Office of the Information Commissioner.³² You should also attach a copy of the agency's notice of the original decision and, where relevant, internal review decision (if you received one) – see [Sample complaint to Information Commissioner letter](#) below.

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 decision.³³ However, the Commissioner may accept complaints lodged after this time.³⁴

The Commissioner determines the procedure for investigating and dealing with complaints and may give directions as to the conduct of proceedings.³⁵ These may include holding formal proceedings or hearings, directing all submissions to be made in writing or requiring parties to attend conferences.³⁶

The Commissioner must make a decision in writing and give reasons for the decision.³⁷

²⁹ Ibid s 43.

³⁰ Ibid.

³¹ Ibid ss 39(3), 65.

³² FOI Act s 66; FOI Regulations s 8.

³³ FOI Act s 66(2).

³⁴ Ibid s 66(4).

³⁵ Ibid s 70(4).³⁶ Ibid s 70(5).³⁷ Ibid s 76(2).

³⁶ Ibid s 70(5).³⁷ Ibid s 76(2).

³⁷ Ibid s 76(2).

There is no fee to make a complaint to the Information Commissioner. 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 exceptional or unreasonable conduct, they may order that party to pay another party's costs.

Can I appeal the Commissioner's decision?

You cannot appeal the Commissioner's decision if you think it was 'wrong' or not the right decision that should be made in the circumstances.

However, if the Commissioner makes a legal error, you may appeal to the Supreme Court.³⁸ You should seek legal advice before appealing to the Supreme Court.

Read: EDO's factsheet on [Judicial Review of decisions made under the Environmental Protection Act 1986 \(WA\)](#) which contains general information on judicial review.

Evaluate this resource a

EDO welcomes feedback on this legal resource. Your feedback will help us ensure we are providing useful legal information.

If you have any concerns or suggestions regarding this legal resource, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:



³⁸ Ibid s 85.

Sample access application letter a

John Smith
[If relevant: group name]
[Address]

[date]

FOI Services
Department of Water and Environmental Regulation
Locked Bag 10
Joondalup DC WA 6919
By email: foi@dwer.wa.gov.au

Dear FOI Coordinator,

Freedom of Information - [subject matter of your request]

Pursuant to the *Freedom of Information Act 1992* (WA), I seek access to the following documents dated between [date range] which refer or relate to the [subject matter generally, eg a project or company] (excluding information which has already been made publicly available):

- [list documents you are seeking – examples below for documents that may be sought in relation to understanding how decisions had been made about a particular piggery project]
- *Correspondence between the Department and [proponent];*
- *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 [proponent] and/or other agencies and/or the Minister for Environment.*

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

I consent to the redaction of:

- the personal information of third parties;
- the names of third parties from the above documents.

I respectfully request that you exercise your discretion and decide not to impose any charges in respect of this request, in accordance with s 16(1)(g) of the FOI Act. [If relevant: [group name] is a small, unincorporated conservation organisation with limited funds / I am an individual with limited funds]. I/We make this application in the public interest and not for any personal gain.

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

Yours sincerely,
John Smith

Sample internal review letter a

John Smith
[If relevant: group name]
[address]

[date]

FOI Services
Department of Water and Environmental Regulation
Locked Bag 10
Joondalup DC WA 6919
By email: foi@dwer.wa.gov.au

Dear FOI Services,

Freedom of Information - [subject matter of request]

On [date], I applied for documents relating to the above matter.

On [date], I received notification from your Freedom of Information Contact Officer that access to [document] from that file was refused on the ground that the document/information was exempt under Schedule 1, [clauses] of the *Freedom of Information Act 1992*.

Pursuant to section 39 of the Freedom of Information Act 1992, I request an internal review of this decision.

[You may wish to raise the reasons you think a document is not exempt. For example:

- a) (Cabinet exemption): the document sought by my application was not prepared for the purpose of submission to Cabinet. It was prepared for a different purpose. The fact the document was submitted to Cabinet does not mean it falls within the exemption; or
- b) (Deliberative Process exemption): the document sought by my application would not 'reveal' opinions or advice prepared for the purpose of the deliberative process of government because it is a water licence application which does not contain opinions or advice.]

[If the exemption claimed by the agency includes reference to the 'public interest', you may wish to explain why you consider access to the documents is in the public interest].

Yours sincerely,
John Smith

Sample complaint to Information Commissioner letter

John Smith
[If relevant: group name]
[address]

[date]

Information Commissioner
Office of the Information Commissioner
By email: info@oic.wa.gov.au

Dear Information Commissioner

Freedom of Information - [subject matter of request]

On [date], I applied to the [agency] for documents relating to the above matter.

On [date], the agency [refused my request/refused to give me access to certain documents].

On [date], I sought internal review of the agency's decision. On [date], the agency provided with the internal review decision.

I make this complaint pursuant to section 65 of the *Freedom of Information Act 1992*.

[You may wish to give brief reasons why you think the agency's decision is incorrect. If you have already set these reasons out in internal review, you can use the same arguments].

Yours sincerely,
John Smith