



# Environmental Defenders Office

## Accessing Information Held by the NT Government

*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 use of this work.*

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This factsheet provides information about how to access public information held in the Northern Territory. If you need information about how to access personal information in the Northern Territory contact the Office of the Information Commissioner Northern Territory (**‘Information Commissioner’**).

### Introduction

Obtaining information and documents held by government is often important in determining your legal rights and options. Information and documents may provide evidence, which is useful when preparing a legal case.

In the Northern Territory, 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.

Information and documents that are not freely available may still be subject to a legal right for members of the public to access them. To obtain information and documents held by the Northern Territory government which is not freely available, you can:

1. Write to the government department or organisation which you think holds the information and ask them to provide it to you voluntarily; or
2. Make a formal request for government information under the [Information Act 2002](#) (**‘Information Act’**) (**‘access application’**).

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

## Which public sector organisations must provide information?

Access applications may be made to the following Northern Territory public sector organisations:<sup>1</sup>

- Certain types of agencies  
For example, Northern Territory government departments – such as the Department of Health or the Department of Education.
- Local authorities  
This means local councils.
- Statutory corporations  
For example, [Desert Knowledge Australia](#).
- A person appointed, or body established, by or under an act or by the Administrator or by a minister  
For example, the [NT Environment Protection Authority](#), the [Development Consent Authority](#) and Pastoral Land Board.
- The [Northern Territory Police](#)
- A court of the Northern Territory  
Except in relation to its judicial functions and a coroner in relation to an inquest or an inquiry.
- A tribunal of the Northern Territory  
Except in relation to its decision-making functions.
- A person declared to be a public sector organisation  
This includes the Chief Executive Officer of an organisation, and any officer, employee or agent, and persons who provide services to the public sector organisation.

Access applications **cannot** be made to:<sup>2</sup>

- Business divisions of the Northern Territory government  
Such as [the Land Development Corporation](#), or;
- Government owned corporations  
Such as [Power and Water Corporation](#).

If you are in doubt about whether an application to access government information can be made to a particular government organisation, visit the Information Commissioner's website or contact the organisation to find out.

Visit: The Information Commissioner's page on [Public Sector Organisations](#) for more information.

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<sup>1</sup> *Information Act 2002* (NT) s 5 ('*Information Act*').

<sup>2</sup> *Ibid* s 5(4).

## Which information can be accessed?

Under the Information Act, you can access 'government information'. Government information means a record held by or on behalf of a public sector organisation. A record means recorded information in any form (including data in a computer system) that is required to be kept by, or on behalf of, a public sector organisation as evidence of the activities or operations of the organisation.<sup>3</sup> Records may include emails, documents, plans, photographs, or reports.

## Making an application

An application for access to information under the Information Act must:<sup>4</sup>

- be in writing;
- include your name – this can be an individual or an incorporated group. Unincorporated groups should make applications in the names of the members of the group;
- include an address for correspondence;
- contain enough information to identify the records you are requesting;
- include proof of your identity – usually a copy of an identity document such as a driver's licence or passport is sufficient.

There is a \$30 application fee. However, you can seek to have the fee waived when making your access application (see [Costs](#) and [Fee Waivers](#) below).

If you wish to use an application form, the Northern Territory Government has provided a blank application form on its website. Some public sector organisations also have their own application form. However, you do not need to use a form so long as you comply with the requirements set out above.

Visit: The NT Government's page on [Freedom of Information](#) for more information and [download a FOI application form](#).

It is important to state as clearly as possible what information you wish to obtain. For example, if you are aware of specific documents that you wish to seek access to, providing the following details will assist the processing of your application:

- the date or approximate date of the document;
- the type of document;
- the author;

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<sup>3</sup> *Information Act 2002* (n 1) s 4.

<sup>4</sup> *Ibid* s 18.

- the title of the document;
- or the subject or event that it relates to.

If you are unsure how to write your request because you don't know how much relevant information is held by the organisation or what types of documents exist, it may be useful to contact the organisation in advance of making your application.

Visit: The Information Commissioner's page on [Public Sector Organisations](#) for the contact details of FOI officers within public sector organisations

### **Costs**

In addition to the \$30 application fee, a public sector organisation will also charge costs for processing an application, including the costs of searching for, retrieving and returning information, considering the information and making a decision.

If there are many documents, the organisation may write to you with an estimate of costs, or you can request one yourself.<sup>5</sup> If the organisation provides a cost estimate, it will not start processing the application until you confirm that you will pay the costs. The organisation may also ask you for a deposit to be paid before it starts processing the application.

The organisation may also provide you with a list of documents identified as falling within your request. You can then tell the organisation if there are any documents you do not want it to consider as part of your request, and a new cost estimate will be issued.

Visit: The Information Commissioner's page on [Fees and Charges](#) to see the full schedule of fees for more information about FOI fees, including how to pay them.

### **Fee Waivers**

If you are unable to pay the costs or your information has a strong public interest value, you may apply to have your application fee and/or processing fees waived or reduced. There is a standard fee waiver application form you can fill out, available on the Northern Territory Government's website.

Visit: The NT Government's page on [Freedom of Information](#) for more information and [download a fee waiver application form](#).

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<sup>5</sup> Information Regulations 2003 (NT) cl 7.

A waiver or reduction in costs can be requested in an application or when a cost estimate is received. In deciding whether to waive or reduce costs, an organisation will consider:

- the circumstances of your application;
- your financial means or that of your group;
- the purpose of the Information Act – which includes providing the Northern Territory community with access to government information.

You may wish to support your application by explaining how and why the information you seek relates to an issue of importance to the community, including if there has been significant public or media attention.

If you are applying on behalf of a group, it is also helpful to include information about your group's composition (for example, if it is a grassroots or community organisation), its charitable status (if applicable) and its goals and sources of funding.

If you wish to dispute a decision not to waive or reduce the application or processing fees, you can apply to the organisation for an internal review of the decision (see [Internal Review](#) below).

### **Application procedure and time restrictions**

Once an application has been submitted, the organisation has 30 days from the date it receives the application to write to you with its decision about whether you will be provided access to the documents you are seeking.<sup>6</sup>

The 30-day time period can also be extended by the organisation in certain circumstances, for example, where:<sup>7</sup>

- the application relates to a large amount of information;
- extensive searches are required to locate the information;
- further time is required to consult with a third party – for example, if your request relates to information which includes commercial information, the organization may contact the company which produced that information to confirm whether it consents to the information being disclosed;
- complying with the 30-day timescale would unreasonably interfere with the operations of the organisation;
- the organisation transfers your application to another organisation. (The first organisation has 15 days to transfer your application. The other organisation then has 30 days from the date of transfer to make a decision.)

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<sup>6</sup> *Information Act 2002* (n 1) s 19.

<sup>7</sup> *Ibid* s 26.

If the organisation does extend the time period, it must write to you and tell you the reason why more time is required. It must also provide you with a time estimate when a decision will be made.

If you do not receive a decision within 30 days and you are not informed of any reason for extending the time period, the organisation is deemed to have refused your application for access to information.<sup>8</sup> You can seek an internal review in this situation (see [Internal Review](#) below).

## Decisions and exemptions

You may be provided access in one of two ways, either by providing you with a copy of the documents or by allowing you to examine the documents. When the organisation writes to you with their decision, they must notify you how they will provide you with access.

If an organisation does not provide you with full access to the information, it must explain why it is not providing full access in its decision letter. However, the organisation does not have to tell you about its reasons for restricting access when it would not be in the public interest to know whether the information exists or not.<sup>9</sup>

Organisations can deny or restrict access to documents if:<sup>10</sup>

1. Processing the application will unreasonably interfere with the operation of the organisation  
For example, because a large number of documents have been requested and it would take too many resources for the organisation to search for the records and process them, or
2. If the information is exempted from disclosure under the Information Act because disclosure is not in the public interest.

The Information Act sets out what categories of information are subject to exemptions due to the public interest and how to apply the public interest test, where applicable.

Visit: The Information Commissioner's page on [Public Interest Test in Exemptions](#) for more information about how the public interest test is applied.

Information that is exempt includes:<sup>11</sup>

- Documents created for consideration by the Cabinet, Executive Council, or documents that if disclosed would prejudice or damage the economy of the Northern Territory or give an unfair benefit or detriment to a person. This exemption does not apply if the information is over 10 years old;

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<sup>8</sup> *Information Act 2002* (n 1) s 19(3).

<sup>9</sup> *Ibid* s 21.

<sup>10</sup> *Ibid* ss 24-25.

<sup>11</sup> *Ibid* Pt. 4, div 2.

- Documents that would prejudice the security or defence of the Commonwealth or a State or Territory, or prejudice law enforcement in the Northern Territory;
- Information created or obtained in an investigation, audit or inquiry.

Information that may be exempt if the decision maker considers it is not in the public interest to release the information includes:<sup>12</sup>

- Health, safety, environment and places of significance  
If providing the information would pose a serious threat to life or health of a person, or prejudice measures for protection of public health and safety, or harm or prejudice measures to protect flora and fauna, or harm or prejudice measures to protect places of scientific, cultural or historical significance.
- Commercial and business information, research, examination papers  
Information may be exempt if it is obtained from a business, commercial or financial entity and is a trade secret or contains other commercial information that if released might unreasonably disadvantage the entity.
- Financial and property interests of the Northern Territory or public sector organisation  
Where the information is reasonably likely to have a substantial, adverse effect on the financial or property interests of the Territory or of a public sector organisation.

## Sufficiency of searches

Under the Information Act, a public sector organisation that receives an application must deal with the application as promptly and efficiently, and as fairly and openly, as is reasonably possible.<sup>13</sup>

If you are not satisfied that all reasonable steps have been taken to find the information, you can lodge an application for an internal review (see [Internal Review](#) below). If you are not happy with the outcome of the internal review, you can escalate your complaint to the Information Commissioner (see [Complaining to the Information Commissioner](#) below).

Usually, the Information Commissioner will ask you why you believe that the searches were inadequate. For example, if you have been provided with a document that refers to the existence of other documents that were not provided to you, this may be evidence that the search was not adequate to locate those other documents. The Information Commissioner can require an organisation to conduct further searches or inquiries.

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<sup>12</sup> Information Act (n 1) Pt 4, div 3.

<sup>13</sup> Ibid s 17.

## Reviews and appeals

### Internal review

If you are unhappy with a decision made by an organisation to restrict or deny access to information or to charge a fee for providing access, the first step to resolving the dispute is to make an application for an internal review.<sup>14</sup> This is a type of review which is conducted by the organisation itself. The review will be conducted by a different officer of the public sector organisation to the one who made the first decision.<sup>15</sup>

An application for internal review must be made within 30 days of receiving the initial decision. The application must:<sup>16</sup>

- be in writing;
- state the name of the applicant;
- include the decision and the details of the application that the decision relates to;
- include the reasons for the applicant making its decision; and
- include an address for correspondence.

If you wish, you can use the standard form on the NT Government website.

The review must be conducted within 30 days and the organisation must notify you of the outcome in writing.<sup>17</sup> The letter must also include the reasons for the outcome. If you do not receive notice of the outcome of the internal review within 30 days, the organisation has upheld its initial decision.<sup>18</sup>

Visit: The NT Government's page on [Freedom of Information](#) for more information and [download a form to apply for internal review of a decision](#).

### Complaining to the Information Commissioner

If the decision is upheld, you can make a complaint to the Information Commissioner.<sup>19</sup> You may only make a complaint to the Information Commissioner after you have applied to the organisation for an internal review of a decision and received the outcome of the internal review.<sup>20</sup>

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<sup>14</sup> Information Act (n 1) Pt 3, div 4.

<sup>15</sup> Ibid s 39(5).

<sup>16</sup> Ibid s 38(2).

<sup>17</sup> Ibid s 39(1).

<sup>18</sup> Ibid s 40(2).

<sup>19</sup> Ibid Pt 7.

<sup>20</sup> Ibid s 103(1).



You must make any complaint to the Information Commissioner within 90 days from the date on which the internal review decision was received.<sup>21</sup> A complaint must be made using the Complaint Lodgement Form. There is no fee for making a complaint.

if the Information Commissioner accepts a complaint, he or she will make investigations about the complaint. Following the investigation, the Information Commissioner will notify the parties in writing whether or not there is sufficient evidence to support or dismiss the complaint. If there is sufficient evidence, a mediation will take place. If the parties cannot agree at the mediation how to resolve the matter, the matter may proceed to a formal hearing before the Information Commissioner.

If your complaint is dismissed or cannot be resolved by mediation, you can ask the Information Commissioner to refer your matter to the Northern Territory Civil and Administrative Tribunal (**NTCAT**).<sup>22</sup>

Visit: The Information Commissioner's page on [Complaints to the Information Commissioner](#) to make a complaint against a refusal for access to information and learn about what steps could be taken to resolve your complaint.

The Information Commissioner's [Forms](#) page to download the [Complaint Lodgement Form](#).

Read: EDO's [Guide to the Northern Territory Civil and Administrative Tribunal](#)

## Appeals to the Supreme Court

If you are unhappy with the outcome you receive from the Information Commissioner or the NTCAT, you may be able to appeal the decision to the Supreme Court of the Northern Territory.<sup>23</sup>

The right to appeal is only on a question of law. This means that the Supreme Court cannot hear arguments about the merits of the Information Commissioner's decision (whether or not it was the preferable decision), only arguments about whether or not the Information Commissioner has correctly applied the law.

Appeals to the Supreme Court must be made within 60 days of the decision of the Information Commissioner.<sup>24</sup> If you are unsuccessful in the Supreme Court, you may be ordered to pay the legal costs of the other parties.

Visit: The Supreme Court of the Northern Territory's [website](#) for more information about the Court.

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<sup>21</sup> Information Act (n 1) s 106(3).

<sup>22</sup> Ibid s 112A.

<sup>23</sup> Ibid Pt 8.

<sup>24</sup> Ibid s 129(1A).