



Environmental Defenders Office

Freedom of Information in South Australia

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.

This factsheet was last updated on 22 October 2021

This factsheet provides a brief outline of the [Freedom of Information Act 1991 \(SA\)](#) (**FOI Act**). It explains what is meant by “freedom of information” and how the FOI Act can be used by those seeking to obtain documents and other information held by SA State Government agencies, Local Councils and Universities. As such, this factsheet mainly refers to SA law.

What is Freedom of Information (FOI)?

Freedom of information gives you a legally enforceable right of access to documents held by Governments.

The concept is based on the notion that the free flow of information from the Government to the public is an essential part of a democracy. Freedom of information promotes transparency and accountability throughout the Government process of decision making and encourages the public to participate in this process.

Freedom of information in SA

The [Freedom of Information Act 1991 \(SA\)](#) (**FOI Act**) allows you to:

- Request access to documents in the possession of a State Government agency, Local Council or University
- Request the amendment of documents that relate to you which are incomplete, incorrect, out-of-date or misleading
- Seek a review of a decision made by a State Government agency, Local Council or University.

N.B. It does not apply to private businesses or organisations.

The Commonwealth government and other states/territories have separate legislation.

Which areas of government are subject to the FOI Act?

Only those bodies that are considered part of government are subject to FOI provisions. At the State level these are defined as “agencies” and include:

- Ministers of the Crown
- Boards and Ministers
- Local Councils
- Universities
- Public Hospitals and Health Units
- Regulatory Bodies
- SA Police

Certain agencies are exempt from the FOI Act including Parliament, the Courts and tribunals, and a large number of financial and legal agencies. Additional FOI provisions in the [Local Government Act 1999 \(SA\)](#) apply to local councils, council committees and other authorities that carry out work on the council’s behalf.

Which documents can I access?

The documents you wish to access must either be in the physical possession of the agency or the agency must have the ability to access it. If an application is directed to the wrong agency, then that agency should pass it on to the correct agency if it knows of the likely whereabouts of the document.

The documents available include paper-based documents as well as computer files, plans, photographs, videos, and audio tapes.

The State Government holds many types of documents such as your school, health, welfare and criminal records, minutes and agendas, policy documents, Cabinet documents, research materials, and instruction and procedure manuals. State Government agencies are required to publish lists of the type of information in their possession. This includes the publication of an “information statement”.

Information statements include information on the structure and functions of the agency, how the functions of the agency affect members of the public, the various types of documents held by the agency which are available for access, and a description of how the public can obtain access or seek amendment to documents. Information statements are available for inspection and purchase. Copies can be found in the [Government Gazette](#), in an agency’s Annual Report and on the agency’s website.

What about Cabinet documents?

Special provisions and processes apply for access to cabinet documents.

Cabinet documents older than 20 years can be sought by applying directly to the relevant agency and using the standard application form.

Visit: State Records' page on [Making a Freedom of Information Application](#) for more (general) information about FOI and to download the [FOI Request for Access Form](#).

Older Cabinet documents are transferred to State Records. Depending on the age of the Cabinet document, you may be able to view it at a State Records Research Centre. If not State Records staff will be able to assist you with advice or referral to the appropriate agency.

Visit: State Records' [Research Centre](#) page for more information about the Centre and how to book an appointment to view records.

On 1 October 2009, the Government introduced a policy which allows access to Cabinet documents that are between 10 and 20 years old. This policy – PC031 Disclosure of Cabinet Documents 10 Years or Older – is often referred to as the *Ten-Year Rule*.

Visit: The SA Department of the Premier and Cabinet page on [Accessing Cabinet Documents](#) to:

- Download and read [PC031 Disclosure of Cabinet Documents 10 Years or Older](#)
- Search for and view Cabinet documents that are over 10 years old

When should I lodge a FOI application?

Many government agencies actively promote their areas of work and make information freely available. In other cases, the information such as annual reports, budget statements and electoral rolls, might already be published or in an agency library. It is not necessary to lodge an FOI application to see these. The agency's information statement is a good place to start in your search for information.

N.B. Very often the information you are seeking can be obtained by simply asking for it. Prior to lodging a FOI application you should ask the agency directly for the relevant documents.

Read: EDO factsheet on [Access to Government Documents in SA](#) for a list of government agencies and corresponding links to their information databases/registries.

Making a FOI application

Before making an FOI Application, it is best to discuss your application with the agency concerned prior to lodging a request.

Using the standard FOI application form

An FOI application must be made in writing and be lodged at the office of the relevant agency or council. For this, you can use the standard application form the SA government has produced. Alternatively the form can be completed and submitted online.

Visit: State Records' page on [Making a Freedom of Information Application](#) for more (general) information about FOI and to access the FOI Request for Access Form.

Writing a letter

Alternatively, you can compose a letter to lodge at the office of the relevant agency or council. Your letter must:

- specify that you are making an application under the [Freedom of Information Act 1991 \(SA\)](#)
- include your name and an address in Australia
- specify the documents you would like to access and the matter they concern
- specify whether the documents contain information about your personal affairs
- request the form of access to the document (eg do you wish to inspect the document or do you want a copy?)
- include the application fee unless you are lodging an application to amend your personal records or you hold a concession card (proof will be required); and
- be sent directly to the agency that holds the information.

If you are unsure about what is required in the application, you should seek the advice and assistance of the agency. The agency is under a legal obligation to help you to clarify the scope of your inquiry.

The most common method of obtaining access to a document is to either inspect it or to be provided with a photocopy. If the document takes the form of an audio or video tape then arrangements can be made to hear or view it, or a written transcript can be made if the document can be reduced to writing.

How much does lodging a FOI application cost?

Applications must be accompanied by a \$38.25 application fee. Further charges may be levied based on the amount of time spent by the Agency dealing with the application and where copies or documents, audio tapes, photographs etc. are requested. In some cases, the agency may also require the lodgement of an advance deposit based on the estimate of the likely cost of the particular application.

If you hold a concession card, or are otherwise financially disadvantaged, all or part of the fees will be waived. Proof of your financial hardship will be required. Also, if a fee appears too expensive, an applicant can request review by the Ombudsman.

There is no fee for making an application to amend your personal records, or to make an application for access to Cabinet documents between 10 and 20 years old.

It is also worth considering asking your local (or any other) Member for Parliament to make the request on your behalf. Members of Parliament are entitled to a generous free FOI allowance and may be willing to assist in matters of public interest, such as the environment. Before going down this path, you should however consider whether you want to risk your matter becoming embroiled in party politics.

Can a FOI request be refused?

A government agency is permitted to refuse access to a particular document, with the most common reason being that the document is an “exempt document”.

Examples of “exempt document(s)” include:

- documents that would lead to an unreasonable disclosure of another person’s affairs
- documents that contain trade secrets or information of commercial value
- documents affecting law enforcement and public safety
- documents of exempt agencies.

Some types of documents, whilst not exempt, may require a process of consultation to take place before being released to the public. The reason for this is that the information contained within them might affect other parties. In such cases the agency must take steps that are reasonably practicable to discover whether the party in question consents to their release.

Other reasons for refusal

Access can also be refused if the agency believes that the search required would be too time-consuming and would result in a substantial and unreasonable diversion of the agency's resources. Generally, documents created before FOI legislation was enacted can also be exempt. This does not apply to documents containing personal information about the applicant.

If a document is deemed to be exempt, the agency, council or university may decide to deny you access to all or part of that document. If access is refused, you will be informed of the reasons why and advised of your appeal rights.

Visit: State Records' page on [Making a Freedom of Information Application](#) for more information on how to seek a review of a FOI determination and download the [FOI Review Decision Application Form](#).

Evaluate this resource

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

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

