



Freedom of Information in the ACT

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This factsheet was last updated on 28 January 2022.

What is Freedom of Information?

The [Freedom of Information Act 2016 \(ACT\)](#) (**the Act**) allows you to access government information held by an agency or Minister in the ACT. Getting access to government held information is an important way for you to properly participate in government processes, which leads to improved government decision-making and holds the government accountable to the public. This fact sheet contains information about how you can access information in the ACT using the Act.

Which information can I access under the Act?

Section 7 of the [Act](#) gives you the right to access government information.

‘Government information’ is information held by an agency or Minister, except for information that relates to a Minister’s personal activities, political activities, or created or received by a Minister in their role as a member of the Legislative Assembly.¹ The Act also sets out an exhaustive list of what is defined as an “agency”.²

Can the government refuse to give me the requested information?

Yes. When reviewing an application to access information under the [Act](#), the agency or Minister must decide whether disclosure of this information would, on balance, be contrary to the public interest.

Section 16 of The Act defines information that is contrary to the public interest as:

- Information that is listed in Schedule 1 of the Act; or

¹ [Freedom of Information Act 2016 \(ACT\)](#) s 14 (**FOI Act**).

² *Ibid*, s 15.

- Information, the disclosure of which would be contrary to the public interest under the “public interest”.³

Information that is listed in Schedule 1 includes:

- Information that is against the law to disclose, or is subject to legal professional privilege;
- sensitive information about a person;
- some types of Cabinet information;
- national, territory or state security information; and/or
- law enforcement or public safety information.

Schedule 2 of the Act outlines factors to be considered when deciding the public interest (including factors in favour, or not in favour of disclosure).

In addition to public interest considerations, the agency or Minister has a number of other considerations that they have to take into account when deciding an application. For example, they can refuse to confirm or deny that particular information is held because the information is contrary to the public interest information and, to do so could reasonably be expected to endanger someone’s life, safety or human rights.⁴ They must also decide whether or not information to be disclosed concerns another party, and consult with that other party before giving access.⁵

The government can also refuse to deal with your application on a number of grounds including:

- dealing with the request would unreasonably divert government resources;
- the application is frivolous or vexatious;
- the application involves an abuse of process;
- the information is already available; and/or
- an application was refused for the same information in the previous twelve months and circumstances have not changed.⁶

If the government decides not to give you access to the document you asked for, it must give you written reasons for the decision.

³ Section 16 of the FOI Act defines ‘contrary to the public interest’; Section 17 outlines the public interest test.

⁴ FOI Act, s 35(e).

⁵ Ibid, s 38.

⁶ Ibid, s 43.

How do I request documents under FOI laws?

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

- filling in the approved form which is available on the website for the relevant agency or Minister's department; or
- writing a letter stating you wish to apply for access to information under the Act.

Visit: The Access Canberra webpage [Freedom of Information Requests](#) for more information about FOI application requests from Access Canberra, which includes the Environment Protection Authority.

The Environment Planning and Sustainable Development Directorate's (**EPSDD**) webpage [Access to government information](#) for more about FOI applications addressed to the EPSDD.

Your request should:

- identify the documents that you are looking for (in enough detail that the agency or Minister will be able to find them);
- provide your contact details, including your postal or email address;
- if the information relates to you, evidence of your identity, or if you are an agent acting on behalf of the person making the application, evidence you are authorised as agent, and evidence of your identity.⁷

You may also include a statement explaining why giving the information to you is in the public interest. If your application does not follow these requirements, the agency or Minister must take reasonable steps to help you make your application comply.⁸

How much will it cost?

You may be charged processing fees. These fees are in the [Freedom of Information \(Fees\) Determination 2018](#). The government agency or Minister may give you an estimate of the fees.⁹

You can ask to have fees waived if:

- the information you requested has special public benefit;
- the information was previously publicly available but is no longer publicly available;

⁷ FOI Act, s 30.

⁸ Ibid, s 31.

⁹ Ibid, s 106.

- you are a concession card holder and demonstrate a connection to the information;
- you are from a not for profit organisation and the application relates to your activities or purposes;
- you are a member of the Legislative Assembly.¹⁰

What happens after I have made my FOI request?

The government agency or Minister that receives your FOI request:

- must tell you within 10 working days that it has received your request;¹¹
- must provide you with a detailed decision within 20 working days, unless an extension has been granted.¹² If a third party needs to be consulted, it can take an additional 15 working days to make the decision.¹³ If no decision is made within this time, the decision is taken to be a refusal to give access.¹⁴

All written documents released under FOI laws are publicly available online (unless they are exempt for privacy, confidentiality or copyright reasons). The agency or Minister is also required to keep a disclosure log which lists FOI requests that it has received.¹⁵

FOI application and review process

- Make a request to the FOI officer of the agency or Minister
- Request a review of decision by Ombudsman
- Appeal Ombudsman's decision to ACAT

How do I appeal a refusal to give me information?

Ombudsman Review

If you are unhappy with the decision of the agency or Minister, you can ask the Ombudsman for a review. The Ombudsman has the power to:¹⁶

- confirm a decision;
- vary a decision;
- set aside a decision and make a substitute decision;

¹⁰ FOI Act, s 107.

¹¹ Ibid, s 32.

¹² Ibid, s 40(1).

¹³ Ibid, s 40(2)(a).

¹⁴ Ibid, s 39.

¹⁵ Ibid, s 28.

¹⁶ Ibid, s 82(2).

- refer you and the agency or Minister to mediation.¹⁷

You must apply for an Ombudsman review within 20 working days after you have been given notice of the decision, or the day the decision was taken to be made (for a “deemed decision”, where a decision was not made in time).¹⁸ The Ombudsman then has 30 working days to make a decision.¹⁹

ACAT Review

The ACT Civil and Administrative Tribunal (**ACAT**) is an independent body with jurisdiction to hear and determine particular disputes in the ACT. You can challenge the decision of the Ombudsman in the ACAT.²⁰ Generally, the parties to the ACAT review are the participants in the Ombudsman review and the decision maker for the original FOI decision.²¹

You must apply for the ACAT review within 20 working days after the Ombudsman’s decision was published, or a longer period if granted by ACAT.²²

Visit: ACAT’s [Review of ACT Government Decisions](#) page for more information about administrative review by ACAT, including application fees

Read: EDO factsheet on [Appealing Planning and Environment Decisions in the ACAT](#) for more information about ACAT’s procedures

Which documents can I access without a FOI request?

Under the Act, government agencies and Ministers must make available a range of documents through the ACT Government’s Open Access information [website](#), including:

- functional information;
- information about the work of the agency tabled in the Legislative Assembly;
- the agency’s policy documents;
- budget papers;
- information on grants made or administered by the agency;
- the agency’s FOI disclosure log, where you can access information that has already been made available from other people’s FOI applications.

¹⁷FOI Act, s 81.

¹⁸ Ibid, s 74.

¹⁹ Ibid, s 82(3).

²⁰ Ibid, s 84.

²¹ Ibid, s 85.

²² Ibid, s 84(2).

You can also ask the government agency or Minister directly for the information before you make the FOI request.

Where can I go for help with my FOI request?

You can find more information through:

- the [Chief Minister, Treasury and Economic Development Directorate](#) website – in particular, see the [Freedom of Information](#) page and read the [Guidance on Freedom of Information \(FOI\) Requests](#);
- Read more factsheets about the ACT on the [EDO website](#)
- Request legal advice from the EDO through our [national intake service](#)