



ACT FREEDOM OF INFORMATION ACT 1989 (FOI Act) Guidelines

The ACT [*Freedom of Information Act 1989*](#) gives individuals the legal right to:

- access documents, including those relating to personal affairs, held by ACT Ministers, their Departments and some statutory authorities;
- ask for personal information to be changed if it is incomplete, out of date, incorrect or misleading; and
- appeal against a decision not to grant access to a document or amend or annotate a personal record.

The FOI Act also requires agencies to make available information about the:

- way they are organised;
- functions they administer;
- types of decisions they make;
- arrangements they have for public involvement in their functions;
- documents they hold and how they can be accessed; and
- policies and procedures which are used in making decisions which affect members of the public.

For more information on how you can access this information contact the Department's FOI Coordinator.

The FOI Coordinator
ACT Department of Treasury
Phone: 6205 0623

FOI Requests

Those seeking information are encouraged to seek access by contacting the Department before resorting to the more formal FOI procedure. A request under the FOI Act should be made in writing (by letter or by using the FOI Application Form) requesting documents under the FOI Act.

The request should:

- *clearly identify exactly* what information is required;
- provide as much detail as possible about the information requested to assist in processing the request; and
- supply a contact telephone number and address.

All requests should be directed to:

The FOI Coordinator
ACT Department of Treasury
GPO Box 158
Canberra ACT 2601
Phone: (02) 6205 0623
Fax: (02) 6207 0304

Exemptions

The FOI Act sets out certain types of documents which may not be accessible (called exempt documents). Exemptions are generally used to protect essential public interests, confidential matters or the private or business affairs of others.

If the Department decides not to grant access to the documents requested, they will provide written reasons for the decision and advise the applicant of their rights of appeal.

Costs

There is no application fees associated with making a request under the FOI Act. Processing charges may be applicable but can be waived in a number of circumstances. To avoid unnecessary charges please consult with the FOI Coordinator to be sure that you are requesting only the documents you really need.

Remissions

Remission of fees and/or charges can be sought on the basis of:

- public interest;
- financial hardship; or
- if the documents sought relate to the applicant's personal affairs.

QUESTIONS AND ANSWERS

What must the Department do when it gets my request?

The Department must:

- provide you with written confirmation of receipt of your request within 14 days of receipt;
- as soon as possible, give you an estimate of the charges if any are applicable; and
- within 30 days provide you with a detailed decision on access to the information. Where the Department has to consult a third party, the time in which it is required to provide you a decision may be extended by another 30 days.

Can I have documents concerning me corrected?

- Yes, providing you are an Australian citizen or are permanently resident in Australia and access was provided to those documents under the FOI Act.
- If, after seeing your documents, you believe the information they contain to be incomplete, incorrect, out of date or misleading, you have a legal right to ask that it be corrected, if one of these grounds is established.
- You can ask for corrections to be made by altering the record, adding an appropriate annotation, or both.
- Companies, incorporated associations and the like are not entitled to have records about their affairs corrected under the Act.

How do I ask for corrections to documents concerning me?

- Once you have obtained access to those documents under the FOI Act:
 - simply write to the FOI Coordinator and ask. No application fee applies; and
 - identify what information is incomplete, incorrect, out of date or misleading.
- Explain with as much detail as possible:
 - what the facts are and what evidence there is to support them; and
 - what changes you want made.

What FOI decisions can I appeal against?

You are able to appeal against decisions:

- preventing you from seeing what you want, when you want, in the form you want, or at all;
- imposing a charge to see what you want (but not decisions refusing remission of processing fees);
- refusing to change or notate documents about you which you think are incomplete, incorrect, out of date or misleading;
- letting others see documents which you say would unreasonably disclose:
 - your personal information;
 - your lawful business or professional affairs; or
 - lawful business, commercial or financial affairs of your firm;
- to give you access to documents about your physical or mental health through your doctor and not directly to you.

What kinds of appeal do I have?

If you are dissatisfied with the information supplied you can require the Department to reconsider its decision (this is known as “internal review”).

If you are still not satisfied after the Department has conducted an internal review, you can then seek an independent review of the decision by the ACT Civil and Administrative Tribunal (“ACAT review”).

Or you can write to the Ombudsman about the Department’s decision or action (“Ombudsman review”).

You also have a legal right to appeal if the Department does not tell you what decisions have been made regarding your request or delays informing you.

Internal review

You can ask the Department to reconsider its decision as long as it was not made by the Minister or the Department’s Under Treasurer.

Generally, you must apply for internal review within 28 days of being told of the decision, but you can ask for extra time. Simply write to the FOI Coordinator at the above address and ask for an internal review.

It will help if you say why you think the decision should be changed or what aspects of the decision are of concern to you.

Someone, in a position senior to the person who made the first decision, will then make a fresh decision.

Following receipt of that decision, you can then appeal to the ACAT or write to the Ombudsman if still dissatisfied with the decision given.

ACAT review

The ACAT is an independent body responsible for reviewing administrative decisions by Departments. It decides whether the decision made on your FOI request was correct.

The ACAT has the capacity to change the Department's decision in almost all cases.

In special cases where a conclusive certificate has been issued, the ACAT can only determine whether reasonable grounds exist for certain claims made in the certificate. It is then up to the Minister to decide whether access should be given.

You can appeal to the ACAT if:

- your request was originally decided by a Minister or the Department's Under Treasurer;
- you are unhappy with an internal review decision; or
- there has been agency delay (see "What about delays?" below).

The ACAT will tell you when and where your case will be heard, who will be there, what will happen, what you should bring with you, what happens at the end of the hearing and other things you should know.

Generally, you must apply for ACAT review within 28 days of being told the decision and enclose the relevant application fee. Further information about the ACAT, including the current application fee, can be obtained from:

<http://www.acat.act.gov.au>

ACT Civil and Administrative Tribunal
DX5691
GPO Box 578
CANBERRA ACT 2601
Phone: (02) 6207 1740

You cannot appeal to the ACAT if:

- an internal review was possible but you did not ask for it; or
- you have complained to the Ombudsman but have not yet received his report.

If you think the ACAT has made a mistake of law in its decision you can appeal to the ACT Supreme Court.

Ombudsman review

The ACT Ombudsman has the power to investigate agency actions under the FOI Act, including decisions, delays, and refusal or failure to act.

The Ombudsman can review FOI decisions to ensure they were made in a fair and proper way. The Ombudsman cannot substitute a decision, but can recommend that the original decision be changed.

Before complaining to the Ombudsman, first try to resolve your problem by discussing it with the Department.

Explain your point of view clearly and ask for the action or decision concerned to be reconsidered. The Ombudsman usually prefers applicants to seek an internal review before complaining about a decision.

If you seek review from the Ombudsman, you cannot appeal to the ACAT until you have received the Ombudsman's report on your complaint. Please refer to <http://www.ombudsman.act.gov.au/> or contact the Ombudsman's Office:

**ACT Ombudsman
Ground Floor, 1 Farrell Place,
Canberra ACT 2601**

**GPO Box 442
CANBERRA ACT 2601
Phone: 1300 362 072**

What about delays?

The Department must provide a decision within:

- 30 days in the case of a request to see a document; or
- 30 days in the case of a request to amend your personal records.

If the Department does not respond within the time limit you can appeal to the ACAT. In some circumstances an extension of time can be claimed by the Department, so it is advisable to check with it before lodging an appeal.

What will it cost me to appeal?

No fees are payable for Ombudsman review.

You will have to pay for your legal representation (unless you represent yourself), witnesses expenses and other costs connected with your ACAT or Supreme Court case, unless you request and receive legal aid.

Legal Aid

The ACT Legal Aid Office can give you legal or financial assistance with your ACAT or Supreme Court cases if you meet certain guidelines.

If you want to discuss your case or other information about ACT Government, legal or financial assistance for your case, please contact the Legal Aid Office on 1300 654 354 or through <http://www.legalaid.canberra.net.au/>.

Further Information

For any further information, please contact:

The FOI Coordinator
ACT Department of Treasury
GPO Box 158
Canberra ACT 2601
Phone: (02) 620 50623