

## FREEDOM OF INFORMATION ACT 1982

### INFORMATION ON RIGHTS OF REVIEW IN RELATION TO DECISIONS MADE BY THE DEPARTMENT OF THE PRIME MINISTER AND CABINET

You have the right to apply for an internal review of a decision refusing to grant access to documents in accordance with your request, including a decision to defer access, or a decision to impose charges. If you apply to internal review, an authorised officer of the Department (not the person who made the original decision) will conduct a review and make a fresh decision on the merits of the case. You should apply in writing for a review of the decision within 30 days of receipt of this letter. If you wish to apply outside this period, you would also need to request an extension of time to apply, and give reasons why an extension should be granted.

No particular form is required to request an internal review, it is desirable (but not essential) to set out in the request the grounds on which you consider that the decision should be changed.

Your request for internal review of the decision should be addressed to:

The FOI Co-ordinator  
Department of the Prime Minister and Cabinet  
PO Box 6500  
CANBERRA ACT 2600

Email: [foi@pmc.gov.au](mailto:foi@pmc.gov.au)

Telephone: (02) 6271 5849  
Facsimile: (02) 6271 5776

If the decision on internal review is not to grant you access to all documents in accordance with your request, you would then also be entitled to seek review of that decision by the Administrative Appeals Tribunal. You would be further notified of your rights of review at the time you are notified of the internal review decision.

If you make an application for internal review and a decision is not made by us within 30 days of receiving the application, you will be entitled to make an application within a further 60 days to the Administrative Appeals Tribunal for review of the original decision.

You are also entitled to appeal to the Administrative Appeals Tribunal if we do not advise you of our decision on your original request within 30 days of receiving a valid application.

If you make an appeal to the Tribunal on the basis that the decision has been delayed, and you receive notification of our decision before the Tribunal has dealt with your application, the Tribunal may extend the proceedings to review the decision.

The Tribunal is a completely independent review body with the power to make a fresh decision. Your application should be accompanied by a filing fee of \$777, unless you are granted legal aid or you come within an exempt category of persons (check with the Tribunal registry in your State). The Registrar or Deputy Registrar may waive the fee on the ground that its payment would impose financial hardship on you. The fee may be refunded where you are successful. The Tribunal cannot award costs either in favour or against you, although it may in some circumstances recommend payment by the Attorney-General of some or all of your costs. Further information is available from the Tribunal on 1300 366 700.

Information about how to make a complaint is set out in the attached Fact Sheet 'Freedom of Information – How to make a complaint' published by the Office of the Australian Information Commissioner (the OAIC).



## Freedom of information – How to make a complaint

October 2010

You may complain to the Australian Information Commissioner if you have concerns about how an Australian Government agency handled a request for documents under the *Freedom of Information Act 1982* (the FOI Act) or took any other action under that Act. If you are unhappy with the agency's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process.

### Disagree with an FOI decision?

If you disagree with an agency's or minister's decision on your request under the FOI Act, you have the right to have the decision reviewed. You can ask an agency to review its decision internally. You also have the right to ask the Information Commissioner to review an agency's or minister's decision. See **FOI Fact Sheet 12 Freedom of information – Your review rights** for more information about the review process.

If you are concerned about the way an agency has handled your matter, you can complain to the Information Commissioner.

### What are the powers of the Information Commissioner?

The Information Commissioner can investigate a complaint about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The Information Commissioner cannot investigate a complaint about a minister.

In conducting the investigation the Information Commissioner has the power to:

- make inquiries of an agency
- obtain information from any person
- take possession of, or inspect, any relevant documents.

If the Information Commissioner decides to investigate your complaint, the agency you have complained about will be notified in writing of the complaint. The Information Commissioner conducts investigations of complaints in private.

### Who can make a complaint?

Any person can make a complaint about the actions of an agency in relation to an FOI activity. You do not need to have requested documents under the FOI Act.

### When should I make a complaint?

You can complain to the Information Commissioner at any time. If your complaint relates to an FOI request you can make the complaint at any stage of the process.

Before making a complaint to the Information Commissioner, you should contact the agency directly to try to resolve your concerns. The Information Commissioner may decide not to investigate your complaint if you have not raised your concerns first with the agency or you have not given the agency a reasonable opportunity to deal with your complaint.



### How do I make a complaint?

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to us using the details at the end of this fact sheet. A complaint form is also available on our website at [www.oaic.gov.au](http://www.oaic.gov.au).

If you need help we can assist you. You can contact us on 1300 363 992 or by email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).

### *What information do I need to put in the complaint?*

To help the Information Commissioner give the best consideration to your complaint, please provide as much relevant information as possible. Be clear about the issues in your complaint and what action or outcome you would like to see as a result.

### *Is there a fee for making a complaint?*

No. There are no costs involved in making a complaint to the Information Commissioner.

### What will happen to my complaint?

An officer of the Information Commissioner will contact you to discuss your complaint and you will be kept informed of the progress of your complaint along the way.

Before deciding whether to investigate your complaint the Information Commissioner may make preliminary inquiries of the agency you have complained about.

If the Information Commissioner decides to investigate your complaint, the Commissioner will write to the agency and request information to assist with the investigation.

### *Can the Information Commissioner decide not to investigate my complaint?*


Yes. The Information Commissioner may decide not to investigate, or may discontinue an investigation, if:

- your complaint does not concern an agency's action under the FOI Act
- it is more appropriate for you to complain to another body (such as the agency or the Commonwealth Ombudsman)
- it is more appropriate for you to ask for the decision to be reviewed
- the agency you complained about has dealt with your complaint, or is in the process of dealing with it
- your complaint is frivolous, lacking in substance or not made in good faith
- you do not have sufficient interest in the matter.

If the Information Commissioner decides not to investigate or discontinues an investigation, the Commissioner will notify you and the agency of the reasons for this in writing.

### How will my complaint be resolved?

In some cases the Information Commissioner's investigation and intervention may result in the agency addressing the issues that you have complained about. In other cases the Information Commissioner may make suggestions or recommendations that the agency should implement. You and the agency will be notified in writing of the outcome of the investigation.



If an agency fails to take adequate and appropriate action to implement any recommendations, the Information Commissioner may issue a formal implementation notice. This notice requires the agency to explain what action it will take to implement the recommendations. The Information Commissioner may also provide a written report to the minister responsible for the agency, and the report will be tabled in Parliament.

Your name will not be included in the report unless there is a special reason and you were first consulted.

#### **Investigation by the Ombudsman**

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the Information Commissioner, the Ombudsman will consult the Information Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate, the complaint and all relevant documents must be transferred to the Information Commissioner.

The Information Commissioner can also transfer to the Ombudsman a complaint that could more appropriately be investigated by the Ombudsman. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

**For further information**  
**telephone: 1300 363 992**  
**email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)**  
**write: GPO Box 2999, Canberra ACT 2601**  
**or visit our website at**  
**[www.oaic.gov.au](http://www.oaic.gov.au)**