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Freedom of Information in New South Wales

What is Freedom of Information?

There are three levels of government in New South Wales - the Commonwealth Government, the NSW State Government and local government.

Each now is covered by Freedom of Information laws.

The NSW State Government recently introduced the Freedom of Information Act 1989 which gives you (*as from 1 July 1989*) the legal right to:

- see records held by State Government agencies, Government Ministers, local government and other public bodies;
- change any records about your personal affairs if you believe they are not correct;
- appeal against a decision by an agency not to let you see information; and
- appeal against a decision by an agency not to allow you to change your personal records.

What sort of information can I ask for?

You can ask for any kind of personal or non-personal information.

Personal information includes your public education, examination and school records, health records, records of superannuation benefits.

Non-personal documents include government policy documents, research material, committee meeting minutes, instruction and procedure manuals, legal advice and library records.

Information can be in the form of certificates, files, computer printouts, maps, films, photographs, tape recordings and video recordings.

From local government, you can ask for information only about your personal affairs.

What agencies and other public bodies can give me this information

Agencies and public bodies that must give you information under FOI include:

- Government departments and authorities
- State boards and commissions
- Government Ministers
- Local and municipal councils
- County councils
- Universities
- Colleges of advanced education
- Public hospitals
- Regulatory bodies eg the Harness Racing Authority

Is any information not available?

Under the Freedom of Information Act, wherever possible, agencies are required to make information available.

You may be denied right of access to information only where, for example, there is a legitimate need for confidentiality or where another person's privacy may be invaded.

This information is called 'exempt' and includes: State Government cabinet and executive council documents, documents which are exempt under Commonwealth or Victorian FOI laws (the Victorian Government also has FOI laws) and documents subject to secrecy provisions in other laws.

Other information which may be exempt includes: documents affecting law enforcement and public safety, personal and business affairs of another and the economy of the State.

How do I ask for information?

Take the following steps:

- identify the information or document that you would like to see;
- identify which agency or organisation is likely to keep that information, if you are unsure about the agency concerned, contact the agency's FOI officer or the Government Information Service;
- write your request on an FOI application form (available from all government agencies) or in a letter and post or deliver it to the agency;
- give as much information as you can about the document you want to see;
- enclose the \$30 fee for your application.

What will the agency do when it receives my request?

The agency or organisation that has your request must deal with it as soon as possible. You will be contacted if any difficulties arise.

The agency or organisation must tell you in writing within 45 days that the information you want to see is available, or if your request has been deferred or refused.

If your request is deferred or refused, you **must** be told why. You have a right to appeal against most of these decisions.

How will I receive the information that I have asked for?

If the information you want is in written form, the agency can provide you with a copy or let you inspect materials.

If the information that you want is not in written form, such as video tapes, sound recordings or photographs, you can hear or view the material.

How much will it cost me to ask for information?

There are two types of charges - application fees and processing fees.

Application fees

A \$30 fee covers your application to see personal or non-personal information.

Processing fees

Processing fees for personal and non-personal information are set at \$30 an hour. However, you are allowed up to 20 hours or free processing time for information about your personal affairs.

Reduction in Costs

Reductions of 50 per cent are offered on all charges:

- for pensioners with the Health Benefit Card as well as those with an equivalent income who are under financial hardship;
- for non-profit organisations under financial hardship;
- where public interest can be demonstrated.

Can an agency refuse to give me the information I ask for?

Yes. A request for information may be refused:

- if the document is exempt;
- if your application would cause an unreasonable workload for the agency, however, the agency **must** offer to help you to change your application to see if the information you want can be found without causing disruption;
- if an agency believes you may be seriously affected by personally being given information on your physical or mental health (you can ask that your medical doctor look at the information and tell you about it);
- if non-personal documents you want to see were created before 1 July 1984.

If documents about me are not correct, can I have them corrected?

Yes. If any information about you is incomplete, incorrect, misleading, or out of date, you have the right to ask that it is corrected.

How do I ask for correction of documents about me?

Applications for correction to a document should be made using an FOI amendment request form or in a letter. If you have any information to support your request, include this with your application.

Post or deliver your application to the agency or organisation which let you look at your file or documents. Include your address for correspondence.

What will the agency do when it receives my request to correct the information?

The agency must tell you about its decision on your request as soon as possible and within 45 days.

If your request is refused, you must be told why.

You will also be told about your rights to appeal against the decision.

If the agency will not change your records, you may ask for a note to be attached with the details of your corrections.

What will it cost to ask for correction of documents about me?

Once you have received documents under FOI, there is no charge to apply to have personal information in them amended.

Where there is significant correction of your personal records and the mistakes were not your fault, all fees and charges paid for the original application will be fully refunded.

What other responsibilities do agencies and organisations covered by Freedom of Information laws have?

All agencies (except local government) must publish information about their operation. This is called a 'Statement of Affairs'.

These statements will include details on the agency's role, how its operations affect the public, how members of the public can take part in making its policies and an outline of the way you can see their documents.

A 'Summary of Affairs' must also be published in the Government Gazette.

What is a review?

If you are unhappy with a decision made by an agency on your FOI request, you can ask for an internal review by that agency.

You may do this if:

- you have been refused access to a document;
- you have been refused access to **part** of a document;
- you have been refused a request to change a personal document;
- you believe you have been charged too much;
- you have been given access to a document but access has been deferred;
- you are a third party specified in the documents, but have not been consulted about giving access to another person; or
- you have been consulted but disagree with a decision to release the documents.

An internal review is not available on requests for access to, or amendment of, a Minister's records.

How do I ask for an internal review?

Applications for internal review should be made in writing or using an FOI review form. Enclose the \$40 application fee.

What will happen with my request for a review?

Someone senior to the person who made the original decision of your FOI application will look at your request for a review. You will be told the results of the review within 14 days.

What will it cost me to ask for a review?

Your review application fee will be \$40 but there are **no** processing charges. Your application fee must be refunded if the original decision is changed.

If you received a reduction on your original application, your application fee for an internal review will only be \$20.

Can the Ombudsman assist me?

If you have already asked for an interview review, the NSW State Ombudsman can help you where, for example, an agency takes too long to process your FOI request, charges too much, or will not let you see information.

The Ombudsman can investigate your complaint but he cannot change or reverse a decision. He can recommend that:

- the decision of an agency be reconsidered;
- action be taken to change the agency's conduct;
- reasons be given for a decision;
- the law or practice be changed.

The Ombudsman cannot deal with matters:

- that are before the District Court;
- where the information has been made exempt by a Ministerial Certificate;
- where a request has been made to see or change a Minister's records;
- where you have complained to the Ombudsman under the Ombudsman Act about an agency and the Ombudsman previously has examined the information in relation to that investigation;
- where the Ombudsman has made a decision under the FOI Act.

No fees are payable for a review by the Ombudsman.

When should I appeal to the District Court?

If you are still unhappy about your review being refused you can appeal to the District Court in NSW. You must lodge your appeal within 60 days of the agency's decision on your request for review or with 60 days of being told of the Ombudsman's decision.

The District Court may:

- confirm the agency or Minister's original decision;
- disallow that decision and make another in its place;
- pass the matter back to the agency or Minister to be dealt with as directed by the Court.

The District Court does not have the power to order that access be given to an exempt document.

What will it cost me to appeal to the District Court?

You may be required to pay the legal costs involved in taking your appeal to the District Court.

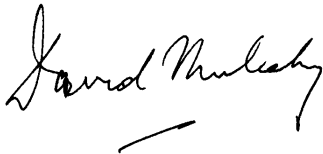
Legal Aid may be available for FOI appeals in some circumstances. Check with the Legal Aid Officers on whether or not you qualify for legal aid before you incur any legal expenses.

Who can help me if I would like further information or have any problems understanding FOI?

Most agencies have a FOI Officer who can help you with any queries.

If you are unsure about the agency concerned, contact the Government Information Service on (02) 9221 3622 or the FOI Unit on (02) 9221 5711.

FOI inquiries in respect of Land and Property Information New South Wales at Queens Square may be directed to the FOI Officer on telephone (02) 9228 6818.



David Mulcahy
Registrar General

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