



OmbudsmanSA

## FREEDOM OF INFORMATION Information Sheet - Applying for Access to Documents

This information sheet will help you to understand your obligations, and those of the agency, when applying for access to documents under the *Freedom of Information Act 1991* (the **FOI Act**).

The FOI Act only applies to South Australian agencies. An agency is only required to consider documents it holds, which includes documents to which it has an immediate right of access.

### Applying for access

Section 13 sets out the criteria for making an application:

An application for access to an agency's document—

- (a) must be in writing; and
- (b) must specify that it is made under this Act; and
- (c) must be accompanied by such application fee as may be prescribed; and
- (d) must contain such information as is reasonably necessary to enable the document to be identified; and
- (e) must specify an address in Australia to which notices under this Act should be sent; and
- (f) must be lodged at an office of the agency, and may request that access to the document be given in a particular way.

### Tips

- While some agencies provide application forms, it is not necessary to use a standard form.
- It is preferable to include a contact telephone number as part of your application.
- Specify as accurately as possible the documents you are applying to access. If the agency is unable to identify the relevant document from the information contained in your application it may refuse to accept it: section 15. Before doing so, the agency must take such steps as are reasonably practicable to assist you to provide information to identify the document: section 15.
- Although you do not need to provide reasons when applying for access to documents, reasons may assist your application (particularly if the agency needs to balance competing interests)
- The *Freedom of Information (Fees and Charges) Regulations 2003* (**FOI Regulations**) set out a schedule of fees and charges. If you satisfy the agency that you are a concession card holder, or that payment of the fee or charge would cause you financial hardship, the agency is obliged to waive or remit the fee or charge: regulation 5.
- Lodge your completed application at an office of the agency that holds the documents you are seeking.
- Each agency has an accredited FOI officer, and it may be helpful to speak to that person before making your application.

### Determining an application for access

The agency must deal with your application within 30 days after receiving it (provided the relevant criteria have been met): section 14(2) of the FOI Act.

The principal officer of an agency (the term 'principal officer' is defined in section 4 and usually means the chief executive officer of the agency) may extend the time for dealing with an application for access in certain circumstances: section 14A.

In the absence of an extension, an agency that fails to make a determination within 30 days after receiving the application is deemed to have refused the application: section 19(2). If an agency makes a belated determination to give access to documents, it is still a determination for the purposes of the FOI Act: section 19(2a).

### Applying for internal review

If an applicant is aggrieved by the agency's determination, and the determination was not 'made by or at the direction of the principal officer of the agency or at the direction of a person or body to which the principal officer is responsible', the applicant may apply to the agency for a review of the determination: sections 29(1) and 29(6).

Section 29(2) sets out the criteria for making an application for internal review:

An application for review of a determination—

- (a) must be in writing; and
- (b) must be accompanied by such application fee as may be prescribed; and
- (c) must be addressed to the principal officer of the agency; and
- (d) must specify an address in Australia to which notices under this Act should be sent; and
- (e) must be lodged at an office of the agency within 30 days after the day on which notice of the determination was given to the applicant or within such further time as the principal officer of the agency may allow.

Where the agency is deemed to have refused the application, the application for internal review should be made within 30 days after the date of the deemed determination.

### Determining an application for internal review

The agency may confirm, vary or reverse the determination under review: section 29(3).

The agency has 14 days after receiving the application to determine it: section 29(5). If it fails to do so, it is deemed to have confirmed the original determination: section 29(5).

If the agency varies or reverses its determination so that access to a document is to be given, it is obliged to refund any application fee paid in respect of the review: section 29(4).

### Applying for external review to the Ombudsman or applying for review in the South Australian Civil and Administrative Tribunal (SACAT)

Under section 39(2) the applicant may apply to the Ombudsman for an external review if aggrieved by a determination:

- (a) of an agency following internal review; or
- (b) that is not liable to internal review (in other words, where the determination was 'made by or at the direction of the principal officer of the agency or at the direction of a person or body to which the principal officer is responsible': section 29(6)).

Alternatively, at this stage, the applicant may apply to SACAT for a review of the agency's determination.

Applications for external review must be made within 30 days:

- (a) after notice of the agency's determination following internal review is given to the applicant; or
- (b) after the date of the determination in any other case.

Where the agency is deemed to have confirmed the original determination, the application for external review should be made within 30 days after the date of the deemed determination.

Similar time limits apply when applying to SACAT for a review.

Provisions exist to extend the time for making an application for external review or commencing review proceedings, but there must be a proper basis upon which to grant an extension. The Ombudsman may confirm, vary or reverse the agency's determination. Ombudsman SA's services are free of charge.

If, after the Ombudsman's review is complete, the applicant or interested parties are aggrieved, they may apply to SACAT for a review. The agency may request a review of the Ombudsman's determination on a question of law, and only with the permission of SACAT. Section 40 sets out the parties' review rights.

### Useful links and further information

State Records FOI website, including application forms

<http://www.archives.sa.gov.au/>

South Australian Government website

[www.sa.gov.au](http://www.sa.gov.au)

South Australian legislation, including the FOI Act and FOI Regulations

[www.legislation.sa.gov.au](http://www.legislation.sa.gov.au)

Information sheet - Applying for Access to Documents

Information sheet - 'Sufficiency of Search' Reviews

Information sheet - Applying to Amend Records and Add Notations

Information sheet - External Review by the Ombudsman

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Information sheets are introductory only.  
They deal with issues in a general way.  
Additional factors may be relevant to particular cases.  
Ombudsman SA considers each case on its merits.