



OmbudsmanSA

FREEDOM OF INFORMATION Information Sheet - Applying to Amend Records and Add Notations

This information sheet will help you to understand your obligations, and those of the agency, when applying to amend records or add a notation under the *Freedom of Information Act 1991* (the FOI Act).

The FOI Act only applies to South Australian agencies.

Applying to amend

Section 30 provides that:

A person to whom **access to an agency's documents has been given** may apply for the amendment of the agency's records if—

- (a) the document contains information concerning the **person's personal affairs**; and
- (b) the information is available for use by the agency in connection with its administrative functions; and
- (c) the information is, in the person's opinion, **incomplete, incorrect, out-of-date or misleading** [emphasis added].

If these criteria are satisfied, the agency must consider whether or not to amend the document, and if it decides to do so, how to amend the document.

The word 'document' is broadly defined in the FOI Act and includes paper and electronic based documents - that is 'anything in which information is stored or from which information may be reproduced': section 4.

An applicant can only apply to amend an agency's records if the document contains information concerning their personal affairs. The term 'personal affairs' is defined in section 4 to mean:

personal affairs of a person includes that person's—

- (a) financial affairs;
- (b) criminal records;
- (c) marital or other personal relationships;
- (d) employment records;
- (e) personal qualities or attributes,

but does not include the personal affairs of a body corporate

Section 31 sets out the criteria for making an application:

An application for the amendment of an agency's records—

- (a) must be in writing; and
- (b) must specify that it is made under this Act; and
- (c) must contain such information as is reasonably necessary to enable the agency's document to which the applicant has been given access to be identified; and
- (d) must specify the respects in which the applicant claims the information contained in the document to be incomplete, incorrect, out-of-date or misleading; and
- (e) if the applicant claims that the information contained in the document is incomplete or out-of-date—must be accompanied by such information as is necessary to complete the agency's records or to bring them up-to-date; and
- (f) must specify an address in Australia to which notices under this Act should be sent; and
- (g) must be lodged at an office of the agency.

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 amend. If the agency is unable to identify the relevant document from the information contained in your application it may refuse to accept it: section 33. Before deciding this issue, the agency must take such steps as are reasonably practicable to assist you to provide information that will enable it to identify the document: section 33.
- Specify how the information is incomplete, incorrect, out-of-date or misleading. If you believe that the information is incomplete or out-of-date, you must provide the agency with information necessary to complete its records or bring them up-to-date. You may wish to tell the agency how you think its records should be amended.
- There is no fee for applying to amend an agency's records.
- Lodge the completed application at an office of the agency that holds the documents you want amended.
- Each agency has an accredited FOI officer, and it may be helpful to speak to that person before making your application.

Determining an application to amend

The agency must deal with the application within 30 days after receiving it (provided the relevant criteria have been met): section 32(2). There is no power for the agency to extend the time for making a determination about an application to amend records. If the agency fails to make a determination within 30 days after receiving the application, it is deemed to have refused the application: section 34(2).

The agency may amend its records in accordance with the application or it may refuse to do so (in certain circumstances): section 34(1).

When can an agency refuse to amend?

Section 35 provides that an agency may refuse to amend its records:

- (a) if it is satisfied that its records are not incomplete, incorrect, out-of-date or misleading in a material respect; or
- (b) if it is satisfied that the application contains matter that is incorrect or misleading in a material respect; or
- (c) if the procedures for amending its records are prescribed by or under the provisions of a legislative instrument other than this Act, whether or not amendment of those records is subject to a fee or charge.

Applying for internal review

If an applicant is aggrieved by the agency's determination, and the determination was not 'made by 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 38(1) and 38(5). The term 'principal officer' is defined in section 4 and usually means the chief executive officer of the agency.

Section 38(2) of the FOI Act 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 addressed to the principal officer of the agency; and
- (c) must specify an address in Australia to which notices under this Act should be sent; and
- (d) 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 38(3) of the FOI Act.

The agency has 14 days after receiving an application for internal review to make a determination: section 38(4). If the agency fails to make a determination within 14 days after receiving an application for internal review, the agency is deemed to have confirmed the original determination: section 38(4).

Adding a notation

If an agency refuses to amend its records, section 37(1) provides that the applicant may lodge a written notice at an office of the agency, requiring the agency to add a notation:

- (a) specifying the respects in which the applicant claims the records to be incomplete, incorrect, out-of-date or misleading; and
- (b) if the applicant claims the records to be incomplete or out-of-date—setting out such information as the applicant claims is necessary to complete the records or to bring them up-to-date.

This is a powerful section as under section 37(2) the agency **must**:

- (a) comply with the requirements of a notice lodged under section 37; and
- (b) cause written notice of the nature of the notation to be given to the applicant.

Then, if an agency discloses information from a part of its records that relates to a notation to any person (including any other agency), section 37(3) states that the agency—

- (a) **must** ensure that, when the information is disclosed, a statement is given to that person—
 - (i) stating that the person to whom the information relates claims that the information is incomplete, incorrect, out-of-date or misleading; and
 - (ii) setting out particulars of the notation added to its records under this section; and
- (b) **may** include in the statement the reason for the agency's refusal to amend its records in accordance with the notation [emphasis added].

It is helpful if the applicant provides the agency with his or her preferred form of words for the notation. Alternatively, the agency may suggest a form of words for the applicant's approval.

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 38(5)).

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 there has been a deemed confirmation of 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 is still aggrieved, they may apply to SACAT for a review. The agency may only 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
www.archives.sa.gov.au

South Australian Government website
www.sa.gov.au

South Australian legislation, including the FOI Act and FOI Regulations
www.legislation.sa.gov.au

Information sheet - Applying for Access to Documents

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.