

APPEALS

CMTEDD FOI FACTSHEET



The ACT Freedom of Information Act 2016 (the FOI Act)

The FOI Act gives a legal right to:

- > access government information unless access to the information would, on balance, be contrary to the public interest;
- > request information concerning you to be changed if it is incomplete, out-of-date, incorrect or misleading; and
- > appeal against a decision to restrict access to a document or refuse to amend/annotate a personal record.

What is Government Information?

Government Information is information held by an agency or Minister, excluding information relating to a Minister's personal or political activities or created or received by a Minister in the Minister's capacity as a Member of the Legislative Assembly.

Government Information can include papers and other materials on which there is writing and any other material from which sounds, images or writing are capable of being reproduced. This includes emails and other electronic records, texts, voice mail, maps, diagrams, plans, photographs, film, sound and video recordings, notebooks and diaries.

By its nature Government Information can include details about other persons or organisations, including other governments. This information is considered third party information for the purposes of the act (See Third Party Consultation FOI Factsheet).

What can be appealed?

Under the Act there are a number of matters where an individual can seek a review:

1. failure by agency to make open access information publically available where it is not contrary to the public interest information;
2. the Information Officer decides to give access to information about a third party, the third party may appeal;
3. the Information Officer determines that the information is not held by the agency;
4. the Information Officer refuses to give access to the information because they have determined that the information is contrary to the public interest information;
5. the Information Officer refuses to deal with an application because:
 - dealing with the application would require an unreasonable and substantial diversion of resources,
 - the application is frivolous or vexatious,
 - the application involves an abuse of power,
 - the information is already available to the applicant,
 - the access application is worded so that it only relates to information that is taken to be contrary to the public interest,
 - a request for the same information was made within the past 12 months and it was refused, and the contrary to public interest factors are materially the same as the ones at the time of the original request;
6. the Information Officer refuses to confirm or deny that the agency holds the information because it is contrary to the public interest information and if confirmed or denied it could:
 - endanger the life of physical safety of a person, or

- be an unreasonable limitation on a person's rights under the *Human Rights Act 2004*, or
 - significantly prejudice an ongoing criminal investigation;
7. refusal by an agency to amend government information relating to an individual.

Who can appeal?

Where an Information Officer makes a decision on one of these matters they must provide a reviewable decision notice to the applicant or where appropriate the relevant third party.

Anybody may appeal against the points numbered 1, 3, 4, or 6 above. Only a relevant third party can appeal against the 2nd point. The 5th point can be appealed by an applicant or a person whose interests are affected. The 7th point can only be appealed by the applicant.

Who do I appeal to?

The Ombudsman may review any of the above decisions. The [Ombudsman's website](http://www.ombudsman.act.gov.au) (www.ombudsman.act.gov.au/Freedom-of-Information) provides details of the process for requesting a review including an [Applying for an Ombudsman Review](#) form.

Timeframe to appeal

Generally, decisions have to be appealed within 20 working days of the day the notice of the decision was published on the disclosure log.

For decisions to not release open access information any appeal has to be made within 20 working days of the day the decision not to release the information is published on the open access portal.

There is scope for the Ombudsman to allow for a longer period.

Third Parties

Where the Ombudsman receives an application for a review, they will notify the Information Officer of the application.

Where the Information Officer is informed of a review, they must tell each relevant third party

consulted when making their original decision that the Ombudsman is undertaking a review of the decision.

Apart from the applicant for the Ombudsman review and the decision maker any other person may apply to the Ombudsman to participate in the review. The Ombudsman decides if the person may participate and the way in which that will occur.

Mediation

The Ombudsman may decide to refer a matter to an accredited mediator for mediation and require the parties to attend the mediation. Generally the Agency will pay the cost of mediation unless the Ombudsman directs otherwise.

Can I appeal a decision of the Ombudsman?

Where the Ombudsman has:

- > confirmed a decision; or
- > varied a decision; or
- > set aside the decision and made a substitute decision;

a participant in the Ombudsman's review may apply to the ACT Civil and Administrative Tribunal (ACAT) for a review of the decision. An application for a review must be made within 20 working days of the Ombudsman's decision being published, or any longer period allowed by ACAT.

The participants to an ACAT review are the applicant for the review and the decision maker for the relevant reviewable decision. Any other person may apply to ACAT to participate.

Further Information

Further information on this factsheet can be obtained from the Information Officer, Information Access Team.

Chief Minister, Treasury and Economic Development Directorate

Email: CMTEDDfoi@act.gov.au

Phone: [\(02\) 6207 7754](tel:(02)62077754)