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Part I

A guide to using the
Freedom of
Information Act



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Acknowledgements

We acknowledge the Gadigal and Bedegal people who are the Traditional Owners of the land on which we work. We pay respect to the tens of thousands of years of stories and community life that has thrived in the Eora Nation and to the Elders past, present and emerging. This always was and always will be Aboriginal land.

This publication was put together by the students of the Monash University Democracy and Freedoms Clinic, a partnership with Grata Fund. Grata Fund particularly thanks Anita Nair, Shiqing Wang, and Alexandra Cunningham for their invaluable work. We also thank Grata's UNSW Law student volunteers, who generously gave their time: Alicia McKenzie and Austin Irwin.

About Grata Fund

Grata Fund is a charity that supports marginalised people and communities to advocate for their legal rights. We do this by removing the financial barriers that prevent test cases in the public interest from getting to court, for people or organisations who do not have the resources to fund litigation themselves. Grata Fund adopts a movement lawyering approach: working with communities, legal experts and advocacy partners on integrated litigation and campaign strategies that tackle injustice while centralising the voices of affected people. Our areas of focus are democracy, human rights and climate change.

For further information about Grata Fund visit www.gratafund.org.au.



Grata Fund is grateful to be sponsored by UNSW Law and Justice.

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Your right to know

Freedom of Information (**FOI**) requests are a powerful tool in our democracy. FOI requests shine a light into the darkest places of government, making it possible for journalists, advocates and communities to find out what is being done in our name and hold governments accountable to the people they serve.

FOIs are routinely used to expose government wrong-doing and protect vulnerable communities from harm, including children held in youth detention and people in aged and disability care.¹

To fulfill this function, the FOI system must be fast, cheap (or even free) and user-friendly. Unfortunately, Australia's FOI system can be slow, expensive and complicated - making it harder than it should be for people to participate in and scrutinise government decision-making.

This guide will help you navigate the FOI system, providing you with tips to maximise your chances of success in getting the information you want.



FOI basics

The *Freedom of Information Act 1982* (Cth) (**FOI Act**) gives any person a right to ask for documents held by the Australian Federal Government and its agencies. Different states also have their own freedom of information laws for you to access State or Territory government information.²

What types of information can I ask for?

You can use an FOI request to get **government information** - i.e. information held by a federal government body. You can also use an FOI request to find out what **personal information** a government body has about you. This guide is about government information.

Under the FOI Act, you can ask for '**documents**' - but this doesn't just mean written records. The information you can obtain through an FOI request is very broad and includes:

- paper or other material on which there is writing or markings;
- sound recordings or film footage;
- information on drives, USBs, CDs or DVDs;
- maps, drawings, plans, photographs or 3D models; and
- text messages, Whatsapp messages, emails and other electronic communications.³

You can also ask for particular parts of a document, for example, a chapter or appendix.

TIP: it's okay not to know exactly what you're looking for.

You don't need to know precisely what form or type of document the information is in to make an FOI request. For example, requests may be made for 'correspondence' or all documents relied upon in relation to a particular decision. However it is still important to be as specific as possible to make sure your FOI isn't rejected.



Who can I request information from?

You can submit an FOI request to almost any Australian Federal Government department or agency and any minister.⁴ For instance, you may want to access information about decisions made by Services Australia, or documents held by the Australian Taxation Office.

An agency also includes a 'prescribed authority' such as a body corporate and some unincorporated bodies set up for public purposes or under federal law.⁵

The Australian Government has a directory of government departments and agencies along with their contact information. It's available online here:

<https://www.directory.gov.au/departments-and-agencies>.

Some government bodies are fully or partially exempt from the FOI Act, including the Australian Security Intelligence Organisation, parts of the Department of Defence, Aboriginal Land Councils, courts and tribunals.⁶ **Appendix A** contains a full list of exempt bodies.

TIP: target the right government body. When you submit an FOI request, the request will go directly to the nominated government department or agency so it is important to make sure that you are asking the right one. If you try to FOI the wrong body you are likely to be delayed or denied the information. You may need to submit a new request to the correct entity. However, under the FOI Act, government bodies are required to assist a person making an FOI request to identify the correct recipient.⁷

Is there another way to get the information?

Before you submit an FOI request you should first consider if there are faster pathways to access the information you want.

Publicly available information

Before making an FOI request, you should:

- Check the government body's **disclosure log** to see if the information has already been published. Every department or agency subject to the FOI Act must publish a log of information it has already released in response to an FOI.
- Check the government body's **information publication scheme** for other information it is required to publish, including information about:
 - the agency's structure;
 - the agency's functions, including decision making powers;
 - details of statutory appointments;
 - the agency's annual reports;
 - the agency's operational information (rules, procedures, powers);
 - details of consultations or policy proposals open for public comment; and
 - information commonly sought under FOI or given to Australian Parliament.



Administrative Access

Sometimes documents can also be obtained through administrative access. This is an informal process by which agencies often authorise the release of commonly sought information. For example, administrative access is most commonly used to allow access to a person's own personal information, for statistics or data on an agency's key functions, or for information available on the agency's website that the applicant would like to access in a different format.

You should consider requesting administrative access if:

- you want to have an informal discussion with officials to better understand what information the agency holds before submitting an FOI request;
- you want to access your own personal information; or
- the information is not sensitive and does not involve third parties so will likely be released to you in full or with minor redactions.

Administrative access may not be appropriate if:

- the information is contentious and disclosure is likely to be resisted by the agency; or
- you want the information to be available to the public - for example so that journalists can use it and publish articles about it.

There is no set process to apply for administrative access to information, but some agencies have information on how to do this on their websites. You may be able to email or call the agency to discuss your request.

TIP: ask for administrative access. When writing your FOI request you can include a sentence that says "I am happy for the information sought to be provided through administrative access". The recipient government body can decide if it can deal with your request more quickly this way, while preserving your right to FOI the documents. If the recipient agrees to release the information through administrative access, it will ask you to formally withdraw your FOI request.



Making an FOI request

How do I structure my FOI request?

The FOI Act requires an application to provide enough information so the person processing your request can identify the document you're looking for. An application can be refused if it is too vague or broad on the basis that it will be too much work to process.

This means it is very important that your FOI request is **as specific as possible**. The more specific your request, the more quickly and easily it can be processed - and the more likely it is to succeed.

If you're looking for a specific document that you know exists, identify it in as much detail as you can. If you aren't sure exactly what form the information might be in, you can still narrow down your request by confining it to a particular **date range**, identifying particular **people involved**, specifying **key words**, or identifying a particular **project, incident or issue**.

Appendix B contains a template with examples that may be useful when writing your FOI request.

How do I submit the application?

The good news is there are only a few formal requirements to submit a valid FOI request:⁸

1. Your request must be **in writing**, but can be submitted via email.
2. You must state that you are making a **request under the FOI Act** (so that it does not look like you are making a general enquiry).
3. You must **describe the information** you want to access.
4. You must include your **contact details** - an email and/or postal address for the agency to send the information to.

Most government departments have information on how to submit an FOI request on their website. Some also have an FOI form that you can fill out - but you can choose whether or not to use this.



How much will it cost?

The cost involved in an FOI request varies depending on the documents requested. Once you've submitted your FOI request, the body will provide you with an estimate of the cost to process it, including an estimate of staff hours required. You can dispute the charge, or ask for a waiver or reduction. Even if you are agreeing to the charge, you must respond within 30 days. Your response must be in writing, and in the case of a dispute or request for waiver or reduction, you must also provide reasons.⁹

Appendix C contains a breakdown of the costs associated with different data retrieval services.

Public interest fee exemption

FOI fees can be waived if the information you're requesting is in the public interest.¹⁰ It doesn't matter whether you are a well-funded non-profit organisation or an individual with minimal resources: as long as the public would benefit from the information, you may be able to have your fees waived.

In your request for a fee exemption, you should identify how the 'general public' or a 'substantial section of the public' will benefit from access to the information.

The relevant minister is then required to consider the public interest in granting access to the document. If a public interest is found, the minister can still charge you a fee, however they must explain their decision.¹¹

See **Appendix D** for examples of public interest arguments for fee waivers.



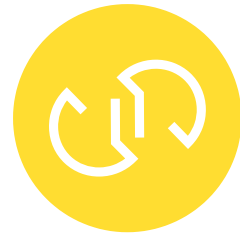
Processing your FOI

Once you submit your FOI:

- The recipient must acknowledge receipt of your request **within 14 days**.
- The recipient must respond to your request **within 30 days** and
 - issue a decision on your FOI and provide the information or tell you why the information is not being provided;
 - request an extension to respond; or
 - in certain circumstances, notify you of an extension (see **Appendix E**).

If a decision isn't made on your FOI request within 30 days (or before any extension expires), your request is considered to be legally refused.¹² If this happens, the department still needs to work on the request, but you may start the appeal process (discussed in Part II of this guide).

TIP: late means free. If you don't get a decision on your request within 30 days (or before any extension expires), you can't be charged any fees for the FOI request and must be refunded any money paid.¹³ Keep an eye on the deadlines, and ask for refund or exemption if your FOI request isn't decided in time.



Outcome of your FOI

Depending on the decision made by the government agency or department, the information you have asked for may be:

1. **Released in full** – meaning you get all the information that you requested.
2. **Refused** – for any of the reasons discussed below.
3. **Partially released** – if only some of the information that you requested is provided, for example because some of the information is redacted.

Reasons for refusal

There are a number of reasons that a government agency or department can refused your FOI request:

1. The information you requested doesn't exist.¹⁴
2. The request is too time-consuming to process and would unreasonably divert resources from the operation of the government body (**practical refusal**).¹⁵
3. The documents you requested are subject to one or more of the exemptions in the FOI Act.¹⁶

Appendix F contains the categories of exempt documents. Some exemptions completely prevent the release of information (eg, documents affecting national security or cabinet documents). Other exemptions are conditional, meaning the documents must be released unless it is not in the public interest (eg, documents concerning Commonwealth-state relations or the economy). Reasons must be provided where a government department or agency has decided not to release a conditionally exempt document.



Should I seek a review of the outcome?

If you haven't been given access to the information you were looking for and you're not satisfied with the reasons given, **you can apply for a review**.

Unfortunately, it's very common to be provided with inadequate reasons for a full or partial refusal of an FOI request. Grata has also identified a number of exemptions that are routinely overused by government bodies.¹⁷ This practice undermines the democratic accountability that the FOI system is meant to provide and is a symptom of a political culture of secrecy and resistance to transparency.

The review process can be very slow, but it often leads to greater access to documents that were initially refused. See Part II of this toolkit for more information on seeking a review.

TIP: Grata can help. If you're trying to access information in the public interest but your FOI requests have been refused, Grata may be able to help. You can get in touch with us through our website and read more about our particular areas of interest in our FOI hit list report.



Appendices

Appendix A - Exempt Bodies

Exempt Bodies
Aboriginal Land Councils and Land Trusts
Auditor-General
Australian Secret Intelligence Service
Australian Security Intelligence Organisation
Australian Signals Directorate
Inspector-General of Intelligence and Security
National Workplace Relations Consultative Council
Office of National Intelligence
Parliamentary Budget Office
Australian Geospatial-Intelligence Organisation
Defence Intelligence Organisation

Partially-Exempt Bodies	Exemptions
Attorney-General's Department	Documents concerning its commercial activities and activities of the Australian Government Solicitor. Exempt content-service and internet-content documents concerning the performance of a function, or the exercise of a power, under Schedules 5 and 7 to the Broadcasting Services Act 1992.
Australian Communications and Media Authority	Exempt content-service and internet-content documents concerning the performance of a function, or the exercise of a power, under Schedules 5 and 7 to the Broadcasting Services Act 1992.



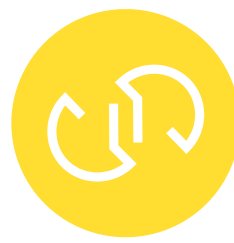
Appendix A - Exempt Bodies, contd.

Partially-Exempt Bodies	Exemptions
Australian Broadcasting Corporation	Documents in relation to its program material and its datacasting content.
Australian Postal Corporation	Documents in respect of its commercial activities.
Australian Trade and Investment Commission	Documents concerning the carrying out, in whole or in part, of overseas development projects.
Australian Transaction Reports and Analysis Centre	Documents concerning information communicated to it under section 16 of the Financial Transaction Reports Act 1988 or section 41 or 49 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.
Classification Board	Exempt content-service and internet-content documents concerning the performance of a function, or the exercise of a power, under Schedules 5 and 7 to the Broadcasting Services Act 1992.
Classification Review Board	Exempt content-service and internet-content documents concerning the performance of a function, or the exercise of a power, under Schedules 5 and 7 to the Broadcasting Services Act 1992.
ComCare	Documents in respect of its commercial activities.
Commonwealth Scientific and Industrial Research Organisation	Documents in respect of its commercial activities.
Department of Defence	Documents concerning the collection, reporting or analysis of operational intelligence; or special access programs, under which a foreign government provides restricted access to technologies.
Department of Treasury	Documents in respect of activities of the Australian Loan Council and in respect of the commercial activities of the Royal Australian Mint.



Appendix A - Exempt Bodies, contd.

Partially-Exempt Bodies	Exemptions
eSafety Commissioner	Exempt content-service and internet-content documents concerning the performance of a function, or the exercise of a power, under Schedules 5 and 7 to the Broadcasting Services Act 1992.
Export Finance and Insurance Corporation	Documents concerning anything done by it under Part 4 or 5 of the Export Finance and Insurance Corporation Act 1991.
Human Services Department	Documents in respect of commercial activities relating to the functions of the Chief Executive Medicare.
Independent Parliamentary Expenses Authority	Documents requesting that the Authority give personal advice under paragraph 12(1)(a) of the Independent Parliamentary Expenses Authority Act 2017 and any other documents that concern the performance of a function conferred on the Authority by paragraph 12(1) (a) of that Act.
Indigenous Business Australia	Documents in respect of its commercial activities.
National Health and Medical Research Council	Documents in the possession of members of the Council of the National Health and Medical Research Council who are not persons appointed or engaged under the Public Service Act 1999.
National Housing Finance and Investment Corporation	Documents in respect of its commercial activities.
NBN Co	Documents in respect of its commercial activities.
Reserve Bank of Australia	Documents in respect of its banking operations (including individual open market operations and foreign exchange dealings) and in respect of exchange control matters.
Special Broadcasting Service Co	Documents in relation to its program material and its datacasting content.
Australian Statistician	Documents containing information collected under the Census and Statistics Act 1905.



Appendix B - Template FOI

Introduction

“This is a request for information under the Freedom of Information Act 1982 (Cth). I request access to the following documents:”

Request

Identify the documents you are requesting in as much detail as you can. The more specific the better. For example:

“Any correspondence between [minister/agency] and the [minister/agency] during the period [date] to [date] regarding [policy/issue]”

OR

“Any document(s) relating to [the decision/incident in question] between the period of [date] to [date].”

OR

“[Document X] produced by [minister/agency] on [date] relating to [the decision/incident in question].”

Background/Context (if appropriate)

Consider adding anything that you may know about the information that you’re requesting, such as the type of document, or particular incidents that the information might be related to.

You may wish to specify whether you want all or part of a document, and why this is the case.

Consider including why it is important that the information sought be on the public record.

Administrative release (if suitable)

“Alternatively, I am happy to receive the information informally, via administrative release”

Contact details

“I can be contacted and receive documents at the following [email / phone / address]”



Appendix B - Template FOI, contd.

Instead of...	Try this...	What's the difference?
I want to access all correspondence between Prime Minister Scott Morrison and Premier Daniel Andrews in 2021 about COVID-19.	I want to access all written correspondence between Prime Minister Scott Morrison and Premier Daniel Andrews, between June 1st 2021 and June 6th 2021 regarding management of hotel quarantine breaches in Victoria .	The second example narrows the time frame and the type of information that you are looking for. This will make it less difficult for an agency to meet your request.
I am requesting any document detailing breaches in hotel quarantine in Victoria.	I am requesting the incident reports for unauthorised persons in hotel quarantine facilities between January 1st 2021 and March 31st 2021 at the Holiday Inn at Melbourne Airport.	Again, here you are providing a clear timeframe, the exact type of document you want to see and the location that you want to know about.



Appendix C - Example Costs

Source: Freedom of Information (Charged) Regulations 2019 (Cth), Schedule 1

Activity item	Charge	Schedule 1
Search and retrieval: time spent searching for or retrieving a document	\$15 per hour	Part 1, Item 1
Decision making: time spent deciding to grant or refuse a request , including examining documents, consulting other parties, making decisions, or notifying any interim or final decision on the request	First five hours: Nil Subsequent hours: \$20 per hour	Part 1, Item 4
Electronic production: provision of information not available in a discrete form in a document by using a computer or other equipment ordinarily used for retrieving or collating stored information	An amount not exceeding the actual cost incurred in producing a document or copy	Part 1, Item 2 Part 2, Items 4, 5 and 7
Transcript: preparing a transcript from a sound recording, a document written in shorthand or similar codified form	\$4.40 per page of transcript	Part 1, Item 3 Part 2, Item 8
Photocopy: a photocopy of a written document	\$0.10 per page	Part 2, Item 3
Other copies: a copy of a written document other than a photocopy	\$4.40 per page	Part 2, Item 3
Replay: replaying a sound or film tape	An amount not exceeding the actual cost incurred in replaying	Part 2, Item 6



Appendix C - Example Costs, contd.

Activity item	Charge	Schedule 1
Inspection: supervision by an agency officer of an applicant's inspection of documents or the hearing or viewing of an audio or visual recording	\$6.25 per half hour (or part thereof)	Part 2, Items 1 and 2
Delivery: posting or delivering a copy of a document at the applicant's request	Cost of postage or delivery	Part 2, Item 9



Appendix D - Public interest arguments for fee waiver

The following list is illustrative of circumstances in which waiving a fee for access to documents under FOI may be in the public interest. It is not definitive or exhaustive.¹⁸

Public interest reasons for FOI fee waiver

The document relates to a **matter of public debate, or to a policy issue under discussion within an agency**, and disclosure will assist public comment on, or participation in, the debate or discussion. E.g. the regulation of firearms in the context of the Australian economy and public safety, coal mining by an Australian business in Papua New Guinea or ASIC's regulation of major corporate financial institutions.

The document relates to an **agency decision that has been a topic of public interest or discussion**, and disclosure of the document will better inform the public as to why or how the decision was made, including highlighting any problems or flaws that occurred in the decision making process. E.g. the use of Commonwealth expenditure and expenditure of public funds.

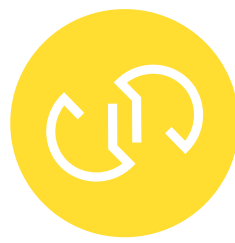
The document will add to the **public record on an important and recurring aspect of agency decision making**. E.g. the expenditure of taxpayer money by contractors funded to provide overseas development assistance on behalf of the Australian Government.

The document is to be used for **research that is to be published widely** or that complements research being undertaken in an agency or elsewhere in the research community.

The document is to be used by a **community or non-profit organisation in preparing a submission to a parliamentary or government inquiry**, for example, on a law reform, social justice, civil liberty, financial regulation, or environmental or heritage protection issue.

The document is to be used by a **member of Parliament in parliamentary or public debate on an issue of public interest** or general interest in the member's electorate.

The document is to be used by a **journalist to prepare a story for publication** that is likely to be of general public interest.



Appendix E - Grounds for extension of time

Reason for extension	Extension period	Who makes the decision?
Third party consultation	30 days	By default, if the government body considers consultation is necessary
Consultation with foreign entity to determine whether release of documents could cause damage to the international relations of the Commonwealth / would disclose confidential information from a foreign government or international organisation	30 days	By default, if the government body determines consultation is needed
By agreement	Up to 30 days	Applicant agrees to extension as requested by government body
Complex or voluminous request	As determined	Extension determined by Information Commissioner, upon request from government body
Following a deemed refusal	As determined	Extension determined by Information Commissioner, upon request from government body

Effect of departmental transfers on processing times

Inter-departmental transfers

1. Deemed to have received the application at the time it was received by the transferring agency.
2. If necessary, the agency should request to extend time for responding to the application by agreement per s 15AA.



Appendix F - Exemptions to disclosure

Exempt documents	FOI Act	Conditional exemptions* <i>*subject to overriding 'public interest' test for disclosure</i>	FOI Act
Documents affecting national security, defence or international relations	s33	Documents that could prejudice Commonwealth-state relations , or confidential documents between governments	s47B
Cabinet documents	s34	Documents revealing the deliberative processes of an agency, Minister or government	s47C
Documents affecting the enforcement of law and the protection of public safety	s37	Documents that could substantially adversely affect the financial or property interests of the Commonwealth or of an agency	s47D
Documents to which secrecy provisions of enactments apply	s38	Documents that could substantially adversely affect the proper and efficient conduct of the operations of an agency	s47E
Documents subject to legal professional privilege	s42	If disclosure of documents would involve the unreasonable disclosure of personal information about a person	s47F
Documents containing material obtained in confidence	s45	Documents containing information about a person's business or professional affairs, or the financial affairs of an organisation	s47G
Parliamentary Budget Office documents	s45A	Current or proposed research conducted by an agency if release would unreasonably expose that agency to disadvantage	s47H
Documents that, if disclosed, would be contempt of Parliament or contempt of court	s46	None	



Appendix F - Exemptions to disclosure, contd.

Exempt documents	FOI Act	Conditional exemptions* <i>*subject to overriding 'public interest' test for disclosure</i>	FOI Act
Documents disclosing trade secrets or commercially valuable information	s47	None	
Electoral rolls	s47A	None	



Endnotes

1. See, eg, Mark Willacy, The Watch House Files, ABC Investigations (online 13 May 2019) <<https://www.abc.net.au/news/2019-05-13/hold-the-watch-house-files/11046190?nw=0>>; and Stephanie Dalzell and Michael McKinnon, 'Children's access to disability funding depending on where they live dubbed "developmental apartheid"', ABC News (online, 13 February 2020) <<https://www.abc.net.au/news/2020-02-13/childrens-access-to-disability-funding-depends-on-their-suburbs/11917466>>.
2. Freedom of Information Act 1992 (WA); Freedom of Information Act 1982 (Vic); Right to Information Act 2009 (Tas); Freedom of Information Act 1991 (SA); Right to Information Act 2009 (Qld); Government Information (Public Access) Act 2009 (NSW); Information Act 2002 (NT); and Freedom of Information Act 2016 (ACT).
3. FOI Act, s 4(1); Office of the Australian Information Commissioner, 'FOI Guidelines, Part 2 – Scope of application of the Freedom of Information Act 1982', <<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-2-scope-of-application-of-the-freedom-of-information-act/>>, [2.29]-[2.30].
4. Freedom of Information Act 1982 (Cth) ('FOI Act').
5. FOI Act, s 4.
6. FOI Act, s 7, Schedule 2.
7. FOI Act, s 16.
8. FOI Act, s 15.
9. FOI Act s 29(1)(f).
10. FOI Act, s 29(5)(b).
11. Office of the Australian Information Commissioner, 'FOI Guidelines Part 4 - Charges for providing access' (9 February 2021) <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-4-charges-for-providing-access/#_ftn26>, [4.11.2].
12. FOI Act, s 15AC.
13. Freedom of Information (Charged) Regulations 2019 (Cth), s 12.
14. FOI Act, s 24A.
15. FOI Act, ss 24-24AA.
16. FOI Act, Part VI.
17. Grata Fund, FOI Litigation Hit List (August 2021) <https://d3n8a8pro7vhmx.cloudfront.net/gratafund/pages/664/attachments/original/1629265812/Grata_Fund_-_FOI_Hit_List_report_-_FINAL.pdf?1629265812>.
18. Office of the Australian Information Commissioner, 'FOI Guidelines Part 4 - Charges for providing access' (9 February 2021) <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-4-charges-for-providing-access/#_ftn26>, [4.109].



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