



Government of **Western Australia**
Department of **Training**
and **Workforce Development**

FREEDOM OF INFORMATION PROCESS

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1 Making an application

Applications for access to documents or information or for the amendment of personal information must be made in writing and lodged with the Department:

By mail:

FOI Coordinator
Department of Training and Workforce Development
Locked Bag 16
Osborne Park Delivery Centre WA 6916

By hand:

FOI Coordinator
Optima Centre – Building B
16 Parkland Road
OSBORNE PARK WA 6017

By email:

Foi.coordinator@dtwd.wa.gov.au

When writing your application, you need to clearly identify or describe the documents or information concerned or if you apply for the amendment of personal information about you, you must provide details to show how or why the Department's records are inaccurate, incomplete, out of date or misleading.

If you ask for everything on a particular subject, the Department will help you narrow the scope of your application to ensure that the work involved is reasonable. Otherwise, the Department may refuse to deal with your application.

You must give an address in Australia where notices can be sent. If possible, include your telephone number/email address as this will help the Department to contact you if necessary to assist in your application being dealt with efficiently and as quickly as possible.

No fee is payable for access to personal information about you. However should the requested documents or information contain non-personal information, you are required to pay an application fee of \$30.

Payment can be made via either:

- Cheque or money order payable to "Department of Training and Workforce Development; or
- BPoint via bpoint.com.au using biller code 1724186.

Please record the receipt and provide it, as proof of payment, with your application

2 Valid application

For an application to be valid it must;

- be in writing;
- give enough details to enable the requested documents or information to be identified;
- give an address in Australia where notices can be sent;
- be accompanied by the \$30 application fee (for non personal information); and
- give any other information needed in order to deal with the request

3 Identification

If you, or an agent on your behalf are applying for access to or the amendment of your personal information, you will need to provide suitable identification.

If you are the applicant, a certified copy of your driver's license or passport is required to confirm your identity.

4 How much does it cost?

No fees or charges apply for access to personal information or for the amendment of personal information about you (eg medical records; employment records etc).

Applications for other documents or information containing non personal information require a \$30 application fee to be paid when the application is lodged and there may be other charges imposed by the Department as follows.

- \$30 per hour of staff time or pro rata for part of an hour for dealing with an application (the Department cannot charge for locating the documents or information within the scope of your request).
- \$30 per hour (or pro rata for part of an hour) for supervision by staff when access is given to view documents or information or the time taken by staff to prepare a transcript from a tape or make photocopies.
- 20 cents per photocopy.
- actual cost incurred by the agency for preparing a copy of a tape, film or computerised information or arranging delivery, packaging and postage of documents.

No application fees or charges apply for internal or external reviews.

Estimate of charges

You are entitled to ask the Department for an estimate of charges when lodging an application. If the charges are likely to exceed \$25, the Department must give you an estimate of charges and ask whether you want to proceed with the application.

You must notify the Department within 30 days of your intention to proceed. In some instances the Department may request an advance deposit from you. However, if you are financially disadvantaged, you need to advise the Department as a reduction of charges may apply.

5 Deciding what information is “personal information”

The term “personal information” is defined in the FOI Act. Basically, personal information is information or an opinion about an identifiable person, whether living or dead.

The kind of information about a person that is “personal information” under the FOI Act includes for example a name, address and telephone number, medical information, financial information, marital status and information about personal relationships and other sensitive, private information.

Other information such as the location, date or time a complaint was made to a regulatory body may be “personal information” if the information identifies someone and there is only one possible source of information.

When an applicant seeks access to personal information about himself or herself, the fact that it is personal information about him or her is a factor in favour of disclosure. Frequently, personal information about an applicant appears in context with non-personal information. It is not a requirement that the non-personal information be deleted before access is given. Background information and factual information that puts the personal information into context should be released to an applicant so that the document or information is meaningful.

Non-personal information may be deleted if for example it is irrelevant to a request or if it deals with a totally different subject matter. Non-personal information that is personal information about a third party should always be deleted unless consent is given for its disclosure to the applicant. If a third party knows the identity of an applicant, he or she may consent.

6 Releasing documents or information that may be technically exempt

The Department has the discretion to release documents or information that may be technically exempt, where that can properly be done. If no harm is likely to follow from disclosure then it is consistent with the aims and objects of the FOI Act to give access to documents or information when a request is received.

Some of the factors that might be relevant to the exercise of discretion include the age of the documents or information, whether the subject matter is current and the interests of the applicant. For example the Department may decide to release a copy of the applicant's own letter to the agency even though it contains references to third parties.

7 Stopping and starting the clock

The Department must deal with your application within the permitted period of 45 days. Time commences on the day after a valid application is lodged with the Department. Generally an application is lodged on the date that it is received, whether it arrives by post, email or by hand. The date shown by a “date received” stamp would indicate that the permitted time starts the following day.

There will be times when it is necessary for the Department to “stop the clock”. For example, when an applicant is given an estimate of charges the clock stops on the day on which the notice of the estimate is given and it restarts the day after the

Department has been notified that the applicant wishes to proceed with the application.

8 Conducting proper searches

If the Department is unable to locate the documents or information and there is reason to believe that those documents should exist, the Department will provide you with a statement of reasons demonstrating its attempt to meet its statutory obligations.

For example the reasons will ordinarily include the locations searched, why those locations were chosen and a description of how the search was conducted (ie computer search, manual search of file series or card index).

Documents or information may not readily be found for a number of reasons:

- documents might have been misfiled;
- your application may not clearly identify or describe the documents or information; or
- the documents or information may not exist.

9 Dealing with large applications

Some applicants make requests for access which are drafted in broad terms and without any real knowledge that documents or information actually exist. Typically such requests are in the form “All documents held on me”, or “All files relating to...”. If the Department receives a request of that nature it will assist the applicant to formulate the request in more precise terms. For example by explaining, subject to any exemptions, the nature and type of documents or information held or by allowing an applicant to have access to a record data base if that would assist to identify the precise document or information required.

The Department has a duty to attempt to reduce the amount of work needed to deal with a large application. The Department is also required to take reasonable steps to help the applicant identify the documents or information required and change the application so that it complies with section 12 of the FOI Act. Reasonable steps include making arrangements to assist the applicant and explaining the record-keeping system and the methods of storage and retrieval. The Department is not required to show a file or files to an applicant nor is it required to provide unrestricted access to files to enable the applicant to decide what he or she wants.

If a complaint is made to the Information Commissioner about the Department’s decision to refuse to deal with an access application the Department must persuade the Commissioner that the work involved in dealing with the application in the form in which it is made would substantially and unreasonably divert the resources of the Department away from its other operations.

Relevant factors include:

- the number of documents or potential documents involved;
- the amount of information or potential information involved;
- the location of those documents or information and the manner of storage or filing;
- the number of people competent to identify the documents or information and the normal duties of those people; or

- the assistance provided by the Department to the applicant to change the application.

10 Dealing with problem applicants

From time to time the Department may deal with applicants who make unreasonable demands such as repeated requests for the same or similar documents. Such applications cannot be ignored.

The Department is under a duty to assist applicants but there is also a corresponding obligation upon the applicant and an element of reasonableness implied if the legislation is to work satisfactorily.

11 Repeated requests

There is nothing in the FOI Act to prevent an unsuccessful applicant from making another access application to the Department for the same documents or information to which access has previously been refused, particularly if the applicant believes that the law or the policy or the Department's position in respect of certain types of document or information may have changed.

There may be a point at which repeated requests for the same documents or information could be viewed as vexatious. However the Department does not have the power to decide that an application is vexatious nor can it refuse to deal with it except under section 20 of the FOI Act. The Department may use the Advisory Services offered by the Office of the Information Commissioner to identify its options.

12 Calculating reasonable charges

Applicants are entitled to have access to documents at the lowest reasonable cost. No charges will be imposed for searching for documents or information. A charge will be waived or reduced if the applicant is impecunious. The meaning of "impecunious" includes being unable to reasonably afford the access charges. The purpose of the legislation is to seek to avoid hardship to a person who does not have enough money to pay the associated charges.

Charges may be imposed for:

- consulting with third parties, if necessary;
- examining documents or information, exercising judgement and making a decision on access;
- deleting exempt matter where appropriate;
- preparing a notice of decision; or
- providing access in the manner required.

13 Writing a proper Notice of Decision

The Department decision maker will send the applicant a formal Notice of Decision that will include details about the documents or information being released. For documents or information being partially released or not being released:

- what documents or information they are, describing them as fully as possible without revealing exempt matter;
- why they are sensitive;
- what exemptions are claimed for which documents or information or parts of documents;
- why those exemptions apply to specific documents or information;

- what is likely to happen if they are disclosed and why those consequences can reasonably be expected to result from disclosure;
- why the expected consequences of disclosure are so important as to warrant a refusal of access; and
- what public interests favour non-disclosure and why those were given more weight than the ones favouring disclosure.

The Department may also provide the applicant with a schedule of documents and/or information which gives a simplified detail of what documents or information were identified, the date of each document or the date the information was extracted, a brief description of what is contained in the document or the extract of information and the decision and exemptions claimed concerning their access.

14 Review of the Department's decisions

Internal review

If you disagree with a decision made by the Department, you can request for that decision to be reviewed by the Department. You can request an internal review when:

- the Department refuses to deal with your application;
- you have been refused access to some or all of the documents or information requested;
- you have only been given access to parts of a document or information and you want to see the parts that are deleted;
- the Department has decided to give access but has deferred giving you access;
- the Department charged too much for access or if the charges seem unreasonable;
- you are a third party mentioned in the documents or information but have not been consulted or you have been consulted but disagree with a decision to release the documents or information to the applicant; or
- the Department does not agree to amend your personal information or make a notation or attachment to the document or information in a form that satisfies you.

You must apply for an internal review within 30 days of receiving the Notice of Decision from the Department. The Director General of the Department may allow you to lodge your application after the 30 days has elapsed. Another officer who is not subordinate to the officer who made the original decision will conduct the review.

Within 15 days of receiving your request for review, the Department will advise you in writing of the outcome of the review as well as your right to lodge a complaint with the Information Commissioner for an External Review of the Department's decision.

Applications for internal review must be made in writing and lodged with the Department.

By mail:

FOI Coordinator
 Department of Training and Workforce Development
 Locked Bag 16
 Osborne Park Delivery Centre WA 6916

By hand:

FOI Coordinator
Optima Centre – Building B
16 Parkland Road
OSBORNE PARK WA 6017

By email:

Foi.coordinator@dtwd.wa.gov.au

15 External review

After an internal review, if you still disagree with the Department's decision you can lodge a complaint with the Information Commissioner. If you make a complaint to the Information Commissioner, the complaint must:

- be in writing and include your address;
- give particulars of the decision to be reviewed including details of the part, or parts, of the decision you want the Commissioner to review;
- include a copy of the Notice of Decision sent to you by the agency – this is the written Notice of Decision provided to you following the agency's internal review;
- if you are the access applicant, you must apply within 60 days from being given the Department's decision; and
- if you are a third party affected by the decision of the Department, you must apply within 30 days.

In exceptional circumstances, the Commissioner may allow a complaint to be lodged after these time periods have elapsed.

Applications for external review must be made to:

Office of the Information Commissioner
Albert Facey House
469 Wellington St
PERTH WA 6831

Further information can be sought from the Office of the Information Commissioner on telephone 6551 7888, or via email at info@foi.wa.gov.au.

16 Making submissions to the Information Commissioner

When a complaint has been made to the Information Commissioner about the Department's decision under the FOI Act, the Information Commissioner will usually require written submissions from the Department to support the decision made by it. If a complainant has been refused access to documents or information because they are exempt the Department must persuade the Information Commissioner that the documents or information are exempt for the reasons given.

Each exemption clause has a number of parts or elements which must be satisfied if the exemption is to apply. The Department must therefore ensure that their reasons given to exempt matter support each part of the exemption clause. If they do not support a claim for exemption then the documents or information will not be exempt.

17 Deciding if you are a third party

You are a third party if:

- personal information about you is contained in documents or information of the Department and an application for access to those documents or information has been made to the Department by someone else; or
- commercial, business or financial information about you, your company or your business is contained in documents or information of the Department and an application for access to those documents or information has been made to the Department by someone else.

18 What to do if you are consulted as a third party by the Department

Before deciding whether to give access to documents which contain personal, commercial, business or financial information about a third party the Department is required to consult the third party and take the views of that third party into account. The Department is not required to consult a third party if it decides to refuse access.

If you are a third party and you have been consulted by the Department you need to advise the Department if you consent to the disclosure of the documents to the applicant. Normally the Department will not disclose the identity of the applicant to you. If you do not provide consent you must advise the Department why this is the case and then give your reasons. It is important that you discuss your objections with the Department and fully explain your views.

If you do not respond to the Department when it contacts you, the Department will proceed to make its decision without the benefit of information from you.

19 Your rights as a third party

If the Department decides to give access against your wishes you will be informed of this decision by the Department and of your rights of review. If access is given against your wishes the Department will not give the access until you have had the time to exercise your rights of review.

20 How to appeal against the Department's decision

In this first instance, you must apply to the Department for an internal review. After internal review if you are still dissatisfied with the Department's decision you can lodge a complaint with the Information Commissioner and request an external review.

21 Information Statement requirements

Under section 96 and section 97 of the FOI Act, the Department is required to ensure that an up to date information statement about the Department, is published. The Department's Information Statement is reviewed every 12 months, which can be accessed publicly on the Department's website www.dtwd.wa.gov.au

22 Exemptions

The FOI Act is subject to some limitations – some documents are protected from disclosure because their release would have an adverse effect on the private and business interests of individuals or would hinder the proper functioning of government.

Of the 15 kinds of exemptions, the most commonly claimed exemptions include Personal Information (Clause 3), Business and Commercial Information (Clause 4), Deliberative Processes of Government (Clause 6), Legal Professional Privilege (Clause 7) and Confidential Communications (Clause 8).

23 More information

More information can be found on the Office of the Information Commissioner's website www.oic.wa.gov.au/en-au/

Or

The Departments website

<https://www.dtwd.wa.gov.au/about-us#freedom-of-information>