



Freedom of Information

Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, investigate workplace complaints, and enforce relevant Commonwealth workplace laws.

Introduction and general information

The *Freedom of Information Act 1982* (the FOI Act) provides you with the right to request access to documents held by a Commonwealth agency.

You also have the right to ask for information about you to be changed or annotated if it is incomplete, out of date, incorrect or misleading. You cannot request access under the FOI Act to a document that is available to purchase by the public.

All decisions under the FOI Act will be made by an authorised decision maker.

How do I make a Freedom of Information (FOI) request?

For your request to be valid under the FOI Act, it must:

- be in writing
- be accompanied by the \$30 application fee
- specify an address in Australia for the service of documents
- be sent or delivered to the agency at the address as listed in the current telephone directory
- contain sufficient information to enable the agency to identify the relevant documents that you are seeking.

Your application cannot be processed until we have received the required \$30 application fee. You may, however, seek remission of the application fee for any reason, such as financial hardship or public interest: see fees and charges on the next page.

All applications under the FOI Act should be addressed to:
Freedom of Information Contact Officer
Fair Work Ombudsman
GPO Box 9887
MELBOURNE VIC 3001

Cheques and money orders should be made payable to the Collector of Public Monies and sent to the above address.

The FOI Act requires an agency to take reasonable steps to assist an applicant in making a valid FOI request.

What documents are covered by FOI?

The FOI Act allows access to documents held by the Fair Work Ombudsman excluding documents which may be exempt from disclosure. Access to documents under the FOI Act may be granted in the following forms:

- inspection of a document
- provision of a copy of a document
- provision of a means to view a film, videotape or sound recording
- provision of a transcript of a sound recording or of shorthand notes
- provision of a computer printout
- magnetic data.

If you would like access to documents in a particular form, you should specify the form of access in your application.

What will happen after my request is received?

If your request is a valid request under the FOI Act, an acknowledgement letter will be sent to you within 14 days of the Fair Work Ombudsman receiving your request. You may be contacted to clarify or modify the scope of your request.

If your request is invalid, the Fair Work Ombudsman will make contact and help you make a valid request.

The Fair Work Ombudsman has 30 days from the day after the date on which a valid FOI request is received to notify you in writing of its decision. However, this timeframe may be extended by a further 30 days if the Fair Work Ombudsman is required to consult persons (including individuals and entities) who may be affected by the release of information.

Are there fees and charges?

Your request cannot be processed until the \$30 application fee has been received. However, you may make a written request that your application fee be waived or refunded for any reason, such as that payment of the application fee would cause financial hardship, or that giving access to the document would be in the general public interest or in the interest of a substantial section of the public. You should provide reasons in support of your application.

The Fair Work Ombudsman must respond to your request to waive or refund the application fee within 30 days of the date on which the request was received.

The Fair Work Ombudsman may also impose charges under the FOI Act for the time taken to process your application, including the time taken in searching and retrieving the documents relevant to your request, the time taken to make a decision on your request, and the costs associated with photocopying and postage.

Fees and charges are set by the *Freedom of Information (Fees and Charges) Regulations*.

Currently, these include:

- \$15 per hour for locating documents
- \$20 per hour for decision making and, where required, consultation with persons who may be affected by release of the documents
- 10 cents per page for copies of documents
- the actual cost of postage and delivery.

If the request for documents is broad (for example, a number of documents are requested), the processing fees can be high. If the request relates solely to a document that contains personal information, costs are capped at \$30 for locating documents and \$40 for decision making.

Where the Fair Work Ombudsman decides to impose charges in relation to your FOI request, you will be sent a notice setting out the estimated charges and how they have been calculated. From the time you receive that notice, the statutory time limit for notifying you of a decision on your FOI request is suspended until you respond.

You may respond to the estimate of charges by either agreeing to pay the charges or withdrawing your FOI request. You may also respond by contending that the charges were wrongly assessed, giving your reasons for your contention.

You may also respond by asking that the charges should be reduced or should not be imposed, giving reasons for that request. The Fair Work Ombudsman will then make a decision. In making a decision whether to reduce or not impose the charges, the Fair Work Ombudsman must take into account whether payment would cause financial hardship, and whether giving access to the document would be in the general public interest or in the interest of a substantial section of the public. Other matters can also be considered.

If the Fair Work Ombudsman does not hear from you within 30 days from the date on which you received the estimate of charges, your request will be treated as withdrawn. If your request is withdrawn, your application fee will not be returned.

You will be notified in writing if the Fair Work Ombudsman decides to impose charges. A deposit may be required if the amount of the charges exceeds \$25. If so, the statutory time limit is also suspended until your deposit is received.

The Fair Work Ombudsman will notify you of the final amount of charges once a decision has been made on your request. Payment of the charges is required before you are given access to documents.

Consultation

The FOI Act imposes an obligation on an agency to consult with third parties before a decision on the release of a document is made, where the document contains information about:

- the business affairs or professional affairs of a person or business
- the commercial or financial affairs of an organisation or undertaking
- the personal information of a person other than the applicant
- Commonwealth/State relations.

If consultation is required under the FOI Act, you will be notified of this and the date on which a decision on the request is due.

Third parties do not have the power to veto a right of access to documents on which they are being consulted. Their submissions on the release of those documents will be taken into account by the decision maker when deciding whether or not to release documents.

A third party may seek internal review or review by the Administrative Appeals Tribunal (AAT) of the decision to release the document.

What types of documents are exempt?

Certain documents may be exempt from disclosure where their release could undermine the functions of Government or damage third party or public interests.

Categories of documents which may be exempt from disclosure include (but are not limited to) the following:

- documents relating to Commonwealth/State relations
- Cabinet and Executive Council documents
- internal working documents
- documents affecting the enforcement of law and/or documents relating to protection of public safety
- documents relating to financial or property interests of the Commonwealth
- documents concerning certain operations of the Fair Work Ombudsman
- documents containing personal information
- legally privileged documents
- commercially sensitive documents relating to business affairs and research
- documents containing material obtained in confidence
- documents where disclosure may constitute contempt of court.

In determining if an exemption applies, the Fair Work Ombudsman will consider whether the document is sensitive and harm may be caused by its disclosure. The Fair Work Ombudsman will not simply claim an exemption because it is technically available.

Reviewing our decisions

If you do not agree with the decision made on your FOI request, you can request the Fair Work Ombudsman to conduct an internal review. By law, the Fair Work Ombudsman must charge you a fee of \$40 for this review.

Your request must be in writing, and should be sent to the Freedom of Information Contact Officer within 30 days of being notified of the decision, or within such further period as the Fair Work Ombudsman allows.

Complaints to the Administrative Appeals Tribunal

You can apply to the Administrative Appeals Tribunal for a review of:

- the internal review decision
- the original decision, if you had no right of internal review.

You can also apply to the tribunal if the Fair Work Tribunal has taken more than 30 days to make a decision about your application for access to documents, or your request for an internal review.

Your application must be in writing and be sent with the normal application fee.

You should lodge your application within 60 days of receiving the decision. You do not have to pay the application fee in some circumstances, for example, if you hold a pensioner health benefit card.

Complaints to the Commonwealth Ombudsman

You may make a complaint to the Commonwealth Ombudsman concerning action taken by the Fair Work Ombudsman in exercising powers or performing functions under the FOI Act.

Where a complaint is made to the Commonwealth Ombudsman, an application cannot be made to the AAT for review of a decision until such time as the Commonwealth Ombudsman has informed you of the outcome of the matter of complaint.

Complaints to the Commonwealth Ombudsman can be made orally or in writing and should be addressed to:

Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Telephone: 1300 362 072

The Commonwealth Ombudsman usually prefers applicants seek an internal review of a decision prior to making a complaint.

Need further information?

For more information, please view the *Fair Work Ombudsman Guidance Note 2 – Document Access Policy*.

Alternatively, contact the Fair Work Infoline on **13 13 94**.

For information regarding your rights under the FOI Act, please visit the Department of the Prime Minister and Cabinet website at

<http://www.pmc.gov.au/foi/index.cfm>

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Monday to Friday, between 8.00am–6.00pm

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94