

This article will discuss the relevant procedures to apply for access to information under the freedom of information laws.



The *Freedom of Information Act 1982* (Cth) (“FOIA”) was designed to enhance government accountability, allowing individuals to gain insight into policy and administrative decision-making. The FOIA applies to federal affairs only; however, each state and territory has equivalent legislation regarding access to information. In New South Wales, the *Government Information (Public Access) Act 2009* (NSW) (“GIPAA”) applies.

### **A. WHAT INFORMATION CAN I REQUEST?**

Under the FOIA, you may request any document held by a federal agency or minister unless the document:

- Is being held by an agency exempt under the FOIA;
- Falls under an exemption in FOIA;
- Is conditionally exempt under FOIA and releasing the document contradicts the public interest;<sup>1</sup> or
- Is already accessible to the public.

Exempted documents usually contain highly sensitive or personal information, such as electoral rolls, national security briefs or commercial trade secrets.<sup>2</sup>

<sup>1</sup> FOIA Part IV, Div 3.

<sup>2</sup> FOIA Part IV, Div 2.

<sup>3</sup> GIPAA s5.

<sup>4</sup> GIPAA, Schedule 2, cl. 4.

<sup>5</sup> OAIC, *FOI fact sheet 7: Freedom of information – Charges*

<sup>6</sup> Information and Privacy Commissioner NSW (January 2019) *How do I access NSW government information?*

It is generally easier to request a document under GIPAA as the Act applies to all NSW government agencies, ministers and other bodies listed in Schedule 4 of GIPAA.

There is also a presumption in GIPAA in favour of disclosing the information unless it would be against the public interest.<sup>3</sup> However, certain confidential information may still be exempt under GIPAA such as information provided to ASIO and certain information relating to Higher School Certificate ranking processes.<sup>4</sup>

### **B. HOW DO I REQUEST INFORMATION?**

#### **B.1. FREEDOM OF INFORMATION**

To request information available under the FOIA you must:

- Write a letter or email to the agency or minister;
- State that you are making a FOI request;
- Describe what document or documents you seek; and
- Provide a return address or email address.



## FREEDOM OF INFORMATION LAWS

The agency or minister must notify you when they receive your request within 14 days. They may also contact you to clarify your request, or to inform you if your application is invalid. You will receive a notification if they decide to transfer your request to a different agency.

Once they have received your request, the agency will generally inform you of their decision within 30 days. However, they may notify you if a time extension is needed.

### B.2. COSTS

Requesting your personal information is free but requesting other types of information may incur a fee. The Office of the Australian Information Commissioner ("OAIC") website lists a range of activities that an agency may charge you for, such as postage and retrieval.<sup>5</sup>

### B.3. AMENDING YOUR PERSONAL RECORDS

Under FOIA, you can request a minister or agency to amend or annotate personal records that are inaccurate or outdated. However, they may refuse your request if they believe that the annotation would be voluminous, defamatory or irrelevant.

### B.4. NSW GOVERNMENT DOCUMENTS

You can make either an informal or formal application under GIPAA.

An informal application involves simply contacting the agency to request the information. If the agency refuses the informal request, you can make a formal or access application.

This can usually be done through an online form on the agency's website. If you cannot find an online form, the NSW Information and Privacy Commission website provides a generic GIPAA Access Application Form.<sup>6</sup>

A GIPAA access application requires the request:

- To be in writing;
- To be lodged with the correct agency;
- To state that you are seeking information under the GIPAA;
- To include your name and address or email address;
- To indicate the type of information you seek; and
- With a \$30 application fee.

## C. WHAT HAPPENS IF MY REQUEST IS REFUSED?

### C.1. REASONS FOR DECISIONS

If your request for a document under FOIA is refused, the relevant agency or minister must tell you the reasons for their decision. They must explain which section of the Act or public interest factors preclude the document being disclosed to you.

### C.2. REQUESTING A REVIEW

If you disagree with their decision, you may apply for an internal review with the agency or apply to the Information Commissioner ("IC").

You can request an IC review for free on the OAIC website.

Comasters can advise clients on  
Freedom of Information laws  
and how to apply for  
information.

## CONTACT US