



## Freedom of Information under Western Australian Law

### *An Introduction to Freedom of Information under Western Australian Law*

Environmental groups and individuals with environmental concerns often need to obtain documents relating to governmental decision-making.

This Fact Sheet provides an overview of the Freedom of Information Act 1992 (WA) (the Act), which relates to information held by State Government departments and authorities. It includes practical suggestions and advice as to how the Act can be used to obtain such information. For details of Commonwealth Freedom of Information laws, see [Fact Sheet 41: Freedom of information law under the Commonwealth](#).

#### **What information is accessible?**

The Act gives every person the right to apply for access to documents held by government departments, local authorities, statutory authorities and government Ministers.

Information may be stored in a number of formats, all of which are defined as “documents” under the Act. This may include paper documents, maps, plans, drawings or photographs, electronic records and sound and video recordings.

All documents held by agencies covered by the Act are accessible, unless the document contains exempt information (see below).

#### **How do I apply?**

If you require access to a document, apply to the agency that you think has that document. Agencies have a legal duty to help you locate the correct agency (if it is not their agency), and to help you comply with the requirements for a correct FOI application.

Your application needs to be in writing, must include your postal address, and must be lodged with the agency holding the documents.

Applications by unincorporated associations should be made in the name of one of the members, as the association has no separate legal existence.

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## Describing the Documents

In order to get the documents that you are looking for, you need to describe them clearly. If you can be very specific about the documents that you are looking for, your request is likely to be responded to more quickly, and the agency is less likely to charge you additional fees.

Think about what your objective is in obtaining the documents. Do you want to check whether a subdivision is being developed consistently with the terms of its planning approval? In this case, you may only need to see a copy of the development application, the development approval, any management plans submitted after approval and any monitoring reports or correspondence related to enforcement action on the local government file. Your request is likely to be processed more quickly if you ask for these documents specifically, rather than asking for the entire file in relation to this development.

On the other hand, if you are concerned that a local government may not have gone through a correct decision-making process in approving a development, you may need ask for all documents that refer or relate to the subject development. However, even a request such as this could be narrowed by identifying the documents that you are not interested in, for example documents that have already been made publicly available, objectors' submissions or documents produced after the development was approved.

The agency may refuse to deal with a request if it would divert a substantial and unreasonable portion of the agency's resources away from its other operations. In this situation, the agency must help you to change the application to reduce the amount of work needed to deal with it. If after help has been given, the agency still refuses to deal with the application, it has to give you written notice of the refusal, without delay.

## How much will it cost?

There is no application fee if you are only seeking access to personal information relating to yourself. For other requests, the application fee is \$30.

In addition to the application fee, the agency may charge at a rate of \$30 per hour for time taken by staff locating documents, photocopying documents or providing supervised access. The agency can also require you to pay the actual cost incurred by the agency for duplicating electronic media and delivery, packaging and postage.

If the extra charges listed above are likely to exceed \$25, the agency is required to contact you, before expenses are incurred, with an estimate of charges and ask whether you would like to proceed with the application. In some cases, an advance deposit (in addition to the application fee) is required by the agency before they proceed to process the request. These deposits generally should not exceed 25% of the estimated charges.

Financially disadvantaged people and non-profit conservation groups may be able to obtain a discount of the total charges other than the application fee. This is at the discretion of the agency. Holders of a valid pensioner concession card are entitled to a 25% discount.

If an estimated charge seems unreasonable, you may apply for an "internal review" of the charge (see below).

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## How, and when, should the agency respond?

Agencies must assess the request and give a written response within 45 days, advising whether the request is approved or refused. If the request to access documents is refused, or only partial access is given, the agency must give you written reasons for the decision. It is good practice for the agency to also provide you with a schedule of documents falling within the terms of your request, that briefly describes the nature of each document, whether it has been withheld or edited, and any exemptions claimed by the agency.

## Are there documents I cannot access?

Access to documents may be denied where the document is exempt because it contains exempt information. There are fifteen categories of exempt information covered in Schedule 1 of the Act. The most common categories are dealt with below.

### *Personal information*

A request may be refused when disclosure would reveal personal information about an individual and that disclosure would not be in the public interest. However, access will be given when the individual concerned consents to the disclosure.

The exemption for personal information does not apply to the names and positions of agency officers and things done by them in the course of their official work.

### *Commercial or business information*

The following information is exempt if it relates to third parties:

- trade secrets;
- information that has a commercial value to a person or company, where disclosure could destroy or diminish that value; or
- information about business, professional, commercial or financial affairs where disclosure could have an adverse effect on those affairs or prejudice the future supply of that kind information to the agency and disclosure is not, on balance, in the public interest.

### *Cabinet and Executive Council documents*

The documents produced by the Government in Cabinet or Executive Council will be inaccessible if they reveal deliberations or decisions of Cabinet, a committee (or subcommittee) of Cabinet, or Executive Council. This may include agendas, minutes, policy options or recommendations for possible submissions, communication between Ministers relating to making a Government decision or formulating Government policy and briefs to a Minister on matters prepared for possible submission to Cabinet. However, these documents may be accessible if they only contain information that is factual, statistical, scientific or technical that is not exempt information. Documents may also be accessed if they came into existence before 12 December 1992 or are at least 10 years old.

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### *Legal Professional Privilege*

Information is exempt from disclosure if it contains legal advice given to an agency or was produced by or on behalf of the agency solely to obtain legal advice.

### *Deliberative process of an agency*

Information is exempt if its disclosure would reveal any opinion, advice, recommendation, consultation or deliberation of the Government, a Minister or an agency and would be contrary to the public interest. However, access is allowed for information that appears in an internal manual of an agency, is factual or statistical, or has been in existence more than 10 years.

### *Damage to inter-governmental relations*

Sensitive, high-level documents passing between the Western Australian government and either other State governments or the Federal government may be exempted by the agency to protect relations between those governments or to protect information of a confidential nature that was communicated in confidence to the agency. Information is not exempt if its disclosure would be in the public interest.

### *Law enforcement, public safety and property security*

Documents may be exempt if their disclosure would impair or reduce the effectiveness of any procedures for dealing with any breach of the law or prejudice an investigation of any breach of the law. Documents may also be exempt if they identity of any confidential source of information relating to law enforcement or administration, prejudice the opportunity of a fair trial of any person, endanger the life or safety of any person or the security of property, prejudice measures for protecting public safety, facilitate the escape of any person from lawful custody or endanger the security of any prison.

### *Redaction of Documents*

Where a document contains some exempt information, and the agency believes that the applicant would prefer to receive the document in a redacted form rather than not received the document at all, the agency must release the document with exempt information deleted.

In these circumstances, the agency may contact you to ask whether you would prefer to receive edited documents. Most applicants would prefer to receive documents in an edited form if the alternative not to receive them at all. If you agree to receiving documents with exempt information deleted, you can still seek review of the agency's decision about what information is exempt.

The deletion of exempt information is different from reducing the scope of the application to exclude all third party information. In this context, third party information means information about entities other than the access applicant and the agency providing the information.

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An agency is obliged to consult all third parties before releasing any information about them, even if the agency believes that the information is not actually exempt. To reduce this consultation effort, an agency will sometimes ask you to reduce the scope of your request by excluding all third party information. If you agree to this, then the agency may delete a great deal of information which is not actually exempt, such as non-sensitive information about the business affairs of a developer applying for environmental approval, and the names of agency officers. In these circumstances, the agency's editing decisions may not be reviewable. If you think there is a risk that important information may be lost in this process, you may decide not to agree to reduce the scope of the request.

## What if I disagree with the decision?

If you are dissatisfied with the agency's decision about what documents will be released, the deletion of exempt material, the amount you will be charged, or the form of access, you have a right to seek internal review of the decision, unless the decision was made by the principal officer of the agency. You must apply for internal review in writing within 30 days of receiving the notice of decision. Your application needs to include particulars of the decision and your postal address. The application can be lodged at an office of the agency. There are no charges for an internal review.

Internal review will be carried out by a more senior person within the agency. The agency has 15 days from the day the review application is lodged to confirm, vary or reverse the decision under review.

If you are dissatisfied with the results of the internal review, you can make a complaint to the Information Commissioner and request an external review. If the agency does not notify the applicant of its decision within 15 days, the agency is deemed to have confirmed its original decision for the purposes of triggering a right of review by the Information Commissioner. The complaint should be in writing and include particulars of the decision, an address to which notices can be sent, a copy of the agency's notice of its decision (if you received one) and be lodged at the office of the Commissioner.

A complaint by the access applicant should be lodged without 60 days of receipt of either the internal review decision or, if internal review is not available, within 60 days of the original decision. However, the Commissioner does have discretion to accept complaints lodged after this time period if the applicant can show cause why a late complaint should be accepted. Complaints may also be lodged by third parties who are dissatisfied with a decision by the agency to release information about them.

The Commissioner determines the procedure for investigating and dealing with complaints and may give directions as to the conduct of proceedings. These may include holding formal proceedings or hearings, directing all submissions to be made in writing or requiring parties to attend compulsory conferences. Parties to the complaints process include the agency, the access applicant and any third parties objecting to the release of their personal or business information.

Usually in proceedings before the Information Commissioner each party is responsible for his or her own legal costs (if any). However, if the Commissioner considers that one party has displayed exceptional or unreasonable conduct he or she may order that party to pay another party's costs.

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*Can I appeal the Commissioner's decision?*

You cannot appeal against the merits of the Commissioner's decision. However, if the Commissioner makes an error of law during the hearing of the external review, you may appeal to the Supreme Court.

*Is there an easier way to get the document?*

You should always try to find out if the document you are seeking is publicly available through a particular body, or whether you are able to obtain a copy with a simple, informal request. Alternatively politicians, local councillors or environmental groups may be able to provide you with a copy of the document.

## **Contacts and further information**

Office of the Information Commissioner [www.foi.wa.gov.au](http://www.foi.wa.gov.au) Tel: (08) 9220 7888

State Law Publisher (for copies of legislation) [www.slp.wa.gov.au](http://www.slp.wa.gov.au) Tel: (08) 9321 7688

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## The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- to provide community groups and individuals with legal advice and representation to help protect the environment;
- to promote law reform that improves environmental protection; and
- to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal and State Attorney-General's Departments.

However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

Environmental Defender's Office WA (Inc)

Suite 4, 544 Hay Street, Perth WA 6000

Tel: (08) 9221 3030

Fax: (08) 9221 3070

Freecall: 1800 175 542 (for WA callers outside the Perth metropolitan region)

Email: [edowa@edowa.org.au](mailto:edowa@edowa.org.au)

## Thank you to our donors

The EDO is grateful for the funding provided by the following organisations to create and maintain these fact sheets.



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## Appendix 1 Sample application letter

John Smith  
Eucla River Action Group  
3 River Road  
EUCLA WA 6443

10 October 2008

Ms Jan Bloggs  
Freedom of Information Officer  
Department of Environmental and Conservation  
The Atrium  
168 St George's Terrace  
PERTH WA 6000

Dear Ms Bloggs,

### **Freedom of Information - Eucla River Piggery, Licence No. 2114**

Pursuant to the Freedom of Information Act 1992, I seek access to the following documents dated between 1 January 2010 and 5 June 2012 which refer or relate to the above Piggery Licence (excluding information which has already been made publicly available):

Correspondence between the Department and Eucla River Piggery Co;  
Correspondence between the Department and other agencies;  
Correspondence between the Department and the Minister for Environment;  
Agendas minutes and any other record of meetings between the Department and Eucla River Piggery Co and/or other agencies and/or the Minister for Environment.

My preferred method of access is to obtain copies of the above information.

I consent to the redaction of the names of third party objectors from the above documents.

I enclose the \$30.00 application fee.

If charges associated with this application are likely to exceed \$25.00, please contact me before those charges are incurred.

Yours sincerely,  
John Smith

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