



Australian Government
Department of Employment
and Workplace Relations

Guide to Accessing and Correcting Your Personal Information

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The document must be attributed as the Department of Employment and Workplace Relations Guide to Accessing and Correcting Your Personal Information.

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Introduction

There are a number of mechanisms you can utilise to access and correct your personal information held by the Department of Employment and Workplace Relations (the department), including under:

1. the *Privacy Act 1988* (Cth) (the Privacy Act);
2. the *Freedom of Information Act 1982* (Cth) (the FOI Act); or
3. an informal administrative arrangement.

The purpose of this Guide is to provide you with some information on how you can go about seeking access to your personal information using these mechanisms and your options for correcting that information in the event that you consider the information to be inaccurate, out of date, irrelevant or misleading.

Access to personal information under the Privacy Act

What does APP 12 say?

As a Commonwealth agency, the department is required to comply with the Australian Privacy Principles (APPs) set out in the Privacy Act. In accordance with APP 12, where the department holds personal information about an individual, the department must give the individual access to that information on request (subject to certain exceptions).

What can I access?

APP 12 gives you the right to seek access to *personal information* that the department *holds*.

Personal information is defined in subsection 6(1) of the Privacy Act to mean ‘information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information is true or not, and
- whether the information or opinion is recorded in a material form or not’.

APP 12 only applies to personal information that the department holds. The department is said to hold personal information if it has possession or control of a record that contains the personal information (section 6(1) of the Privacy Act). This means you can seek access to your personal information physically held by the department as well as any personal information about you held by one of the department’s contracted service providers.

What is the process for seeking access?

APP 12 does not require you to seek access to your personal information in any particular way. However, to ensure your request for access is efficiently identified and processed, the department prefers that you direct your request to the department by emailing us at privacy@dewr.gov.au or by writing to:

Privacy Officer
Legal and Assurance Division
Location code: C50MA1
Department of Employment and Workplace Relations
GPO Box 9880
Canberra ACT 2601

Once the department receives your request for access under the Privacy Act, it will respond within 30 calendar days by either providing you access to the personal information as requested, or by notifying you of our refusal to give you access (APP 12.4). If it is not possible to deal with your request within that timeframe, the department will contact you to explain the delay and provide you with an expected timeframe for finalising the request.

Where it is reasonable and practicable to do so, the department will provide you with your personal information in the manner you have requested. For example, by email, phone, hard copy or an electronic record (APP 12.4).

There is no charge for seeking access to your own personal information (APP 12.7).

Do I have to verify who I am?

In order to ensure you are correctly given access to your personal information and not someone else's, the department will need certain information from you. The information required will likely depend on the interactions you have had with the department, although the department will seek the minimum amount of information from you to establish your identity. Typically, however, you may be asked to provide your name, date of birth, address, or identification documents, such as your drivers license or passport.

If someone is seeking access to your personal information on your behalf, the department will require that nominated representative to provide written authorisation of your approval for them to receive your personal information.

When can the department refuse to give you access?

It is open to the department to refuse access in circumstances where the department is required or authorised to refuse access to personal information by or under the FOI Act or some other Commonwealth Act that provides for access to documents (APP 12.2).

If the department refuses to provide you with access to some or all of your personal information or in the manner you have requested, it will provide you with a written notice which at a minimum sets out:

- the reasons for the refusal, except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and
- the mechanisms available to complain about the refusal (APP 12.9).

What if I am unhappy with the department's decision to refuse me access?

Complain to the department

If you are unhappy with the department's decision, a complaint should first be made in writing to the department. The department will consider your complaint and advise you of an outcome within 20 business days, unless that timeframe is impracticable in the circumstances.

Further information on how to lodge a complaint with the department can be found in the department's [Privacy Complaints Handling Procedures](#).

Complain to Information Commissioner

If you are unhappy with the department's decision, it is open to you to lodge a complaint with the Information Commissioner. Further information on how to do this can be found on the Office of the Australian Information Commissioner's (OAIC) website <http://www.oaic.gov.au/> or by contacting the Office on 1300 363 992.

Commonwealth Ombudsman

You can also complain to the Commonwealth Ombudsman concerning action taken by the department in the exercise of powers or the performance of functions under the Privacy Act. A complaint to the Commonwealth Ombudsman may be made orally or in writing. The Ombudsman may be contacted for the cost of a local call from anywhere in Australia on 1300 362 072.

Access to personal information under the FOI Act

What does the FOI Act say?

Section 11 of the FOI Act provides you with a legally enforceable right to obtain access to a document of the department (except an exempt document). As such, as an alternative to seeking your personal information under the Privacy Act, it is open to you to lodge an FOI request with the department.

What can I access?

A request under the FOI Act can relate to any document in the possession of the department and therefore, unlike APP 12 in the Privacy Act, is not limited to personal information held by the department. There is no charge applicable for processing your FOI request where you are just seeking your own personal information. However, if you make an FOI request for documents containing information other than your own personal information, a processing charge may apply.

What is the process for seeking access?

Applications for access to documents under the FOI Act must:

- be in writing;
- state that the application is made under the FOI Act;

- provide enough information concerning the documents sought as is reasonably necessary to enable a responsible officer of the department to identify them; and
- give details of how notices may be sent to the applicant (for example, a postal or email address) (section 15 of the FOI Act).

Applications to the department may be sent to the department in one of the following ways:

Via email:

Email: foi@dewr.gov.au.

FOI requests made by email must use this address to be validly received.

Via pre-paid post:

To the address of any central or regional office of the department specified in a current telephone directory. The department prefers that you mail your request to the following address:

FOI Team
Legal and Assurance Division
Location Code: C50MA1 - LEGAL
Department of Employment and Workplace Relations
GPO Box 9880
CANBERRA ACT 2601

Delivery in person:

To an officer of the department at the address of any central or regional office of this department specified in a current telephone directory.

Further information on seeking access to documents under the FOI Act can be found on the [Department of Employment and Workplace Relations website](#).

In accordance with the FOI Act, the department will acknowledge your request for access within 14 calendar days from receiving the request and provide you with a decision on access within 30 calendar days (subsection 15(5) of the FOI Act). The timeframe may be extended for an additional 30 days if the department is required to consult with a third party (subsection 15(6) of the FOI Act).

Do I have to verify who I am?

Similarly to the position under the Privacy Act, the department will take reasonable steps to establish your identity before it provides you with access to your personal information under the FOI Act. This is to ensure the department searches its records in relation to the correct individual and does not provide you with someone else's personal information.

It is open to another individual to lodge an FOI request on your behalf. However, the department will require that individual to provide written evidence of your authorisation for them to receive your personal information.

When can the department refuse to give you access?

The FOI Act sets out a number of grounds upon which the department can refuse a request for access (Part IV of the FOI Act). If the department refuses your request for access on one of the grounds, it will provide you with a statement of reasons.

What if I am unhappy with the department's decision to refuse me access?

Internal review

Section 54 of the FOI Act gives you the right to apply to the department for an internal review of a decision on access. A request for internal review must be lodged with the department within 30 days of receiving the department's original decision on access.

No particular format is required but it will help the new decision-maker if you state clearly why you consider the decision should be reviewed. Applications for internal review should be sent to the department in the same manner as requests for access.

Review by Information Commissioner

Alternatively, section 54L of the FOI Act gives you the right to apply directly to the Information Commissioner to seek a review of the department's decision. If you wish to have the decision reviewed by the Information Commissioner you must apply for the review, in writing or by using the online review applicant form available on the [OAIC's website](#) within 60 days of receiving the department's original decision on access. To assist the Information Commissioner, your application should include a copy of the department's decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the Information Commissioner about how an agency handled an FOI request, or other actions the agency took under the FOI Act. Further information on how to do this can be found on [OAIC's website](#) or by contacting the Office on 1300 363 992.

Factors relevant to my decision to seek access to my personal information under the Privacy Act or FOI Act

It is open to you to choose which access mechanism best suits your circumstances. Some key differences between the access regime in the Privacy Act and FOI Act are highlighted below to assist you in your decision:

- Unlike APP 12, an FOI access request must meet certain legislative requirements
- An FOI access request can be broader than just seeking your own personal information and can relate to any document in the possession of the department however a charge may be applicable for access to non-personal information.
- The FOI Act provides for a consultation process where you are seeking access to documents that contain mixed personal or business information about yourself and another person.

- Where the department refuses to provide access to a record under the FOI Act, you can apply to the Information Commissioner for a review of that decision. In undertaking that review function, the Information Commissioner can exercise the department's discretion to give or refuse access. That is, the Information Commissioner can remake the department's decision. In contrast, under the Privacy Act, you can complain to the Information Commissioner about the department's compliance with the procedural requirements of APP 12. After investigating the complaint, the Information Commissioner may find that the department has breached its obligations under APP 12 but it will not remake the decision.

Administrative arrangement

You may also be able to access your personal information held by the department or its contracted providers outside the more formal confines of the Privacy Act and FOI Act. For example, if you are a former employee of the department, you can avail yourself of informal arrangements which enable you to access your own personal information held by the department. This involves you simply asking the department for access to some or all of your personal information and does not require you to satisfy formal legislative requirements such as under the FOI Act.

The aim of these informal access arrangements is to assist you more easily and efficiently find out what personal information is held about you and to access it.

Correcting personal information under the Privacy Act

What does APP 13 say?

APP 13 requires the department to take reasonable steps to correct personal information it holds, to ensure it is accurate, up to date, complete, relevant and not misleading, having regard to the purpose for which it is held.

This requirement applies where the department is independently satisfied that the personal information is 'faulty' or where it receives a request from an individual to correct their personal information.

What is the process for seeking correction of my personal information under the Privacy Act?

There is no charge or formal requirements associated with making a request under the Privacy Act to correct personal information held by the department. However, to ensure your request is dealt with quickly and efficiently, the department prefers that you direct your request to the department by emailing us at privacy@dewr.gov.au or by writing to:

Privacy Officer
Legal and Assurance Division
Location Code: C50MA1 - LEGAL
Department of Employment and Workplace Relations

GPO Box 9880
CANBERRA ACT 2601

The department will respond to your correction of personal information request within 30 calendar days (APP 13.5).

Can the department refuse to correct my personal information under the Privacy Act?

It is open to the department to refuse to correct your personal information if it is not satisfied that the information is inaccurate, out of date, incomplete, irrelevant or misleading. If the department refuses your request it will provide you with a written notice explaining the reasons for the refusal (APP 13.3). In those circumstances, the department will ask you whether you would like to associate with the information a statement that indicates you consider the information to be inaccurate, out of date, incomplete, irrelevant or misleading (APP 13.4).

What if I am unhappy with the department's decision?

If you are unhappy with the department's decision not to correct your personal information, the complaints mechanisms discussed in section 2.6 above are available to you.

Correcting personal information under the FOI Act

What does the FOI Act say?

In accordance with section 48 of the FOI Act, you can apply to the department to amend or annotate a record of personal information held by the department to which you have lawfully had access (e.g. you may have obtained lawful access under the FOI Act or Privacy Act).

You can ask to have the record of personal information amended or annotated in circumstances where you consider the record is incomplete, incorrect, out of date or misleading and you believe the record has been used, is being used or is available for use by the department for an administrative purpose.

What is the process for seeking correction of my personal information under the FOI Act?

An application for an amendment under the FOI Act must:

- be in writing;
- as far as practicable specify:
 - the document containing the record of personal information;
 - the information that is claimed to be incomplete, incorrect, out of date or misleading;
 - your reasons for so claiming; and
 - the amendment requested;

- provide an address in Australia to which a notice concerning the request for amendment or annotation can be sent to you; and
- your application must be sent by post to the department or delivered to an officer of the department. (section 49 of the FOI Act).

The department will respond to your application for amendment or annotation within 30 calendar days (section 51D of the FOI Act).

Can the department refuse to correct my personal information under the FOI Act?

In circumstances where the department does not consider that the record containing your personal information is incomplete, incorrect, out of date or misleading, it can refuse your request to amend or annotate that record. If the department does refuse your request, it is open to you to provide a statement for the department to attach to the relevant record, which among other things, sets out the reasons why you consider the record is incomplete, incorrect, out of date or misleading (section 51 of the FOI Act).

What if I am unhappy with the department's decision?

If you are unhappy with the department's decision not to correct your personal information under the FOI Act, the review mechanisms discussed above are available to you.

Factors relevant to my decision to seek correction of my personal information under the Privacy Act or FOI Act

There is some overlap between APP 13 and the FOI Act procedures, however, there are key differences which you may like to consider before you elect to apply for correction of your personal information under the Privacy Act or under the FOI Act. These key differences are briefly highlighted below:

- APP 13 contains an additional ground upon which to seek correction of personal information which does not appear in the relevant FOI Act provision, that being where you consider your personal information is 'irrelevant'.
- APP 13 contemplates that taking reasonable steps to correct personal information can include deleting personal information where appropriate. Under the FOI Act, the department may act upon an application by amending or annotating a record, but as far as practicable it must not obliterate the text of the record as it existed prior to the amendment (section 50 of the FOI Act).
- An application under the FOI Act must meet the various elements of section 48 which sets out when you can apply to have a record containing personal information amended or annotated and the formal requirements for making an application set out in section 49.
- Where the department refuses to amend or annotate a record under the FOI Act, you can apply to the Information Commissioner for a review of that decision. In undertaking that review

function, the Information Commissioner can exercise the department's discretion to amend or annotate the record. That is, the Information Commissioner can remake the department's decision. In contrast, under the Privacy Act, you can complain to the Information Commissioner where you consider the department has failed to take reasonable steps to correct your personal information. After investigating the complaint, it is open to the Information Commissioner to find that the department has breached its obligations under APP 13. In those circumstances, the Information Commissioner could order that the department make an appropriate correction, deletion or addition to a record.