
November 2010

Freedom of Information Policy

Version 2.0

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1.0 The function, purpose, and objectives of the *Freedom of Information Act 1982* ('FOI Act')

The objects of the FOI Act are to give the Australian Community access to information held by the Commonwealth Government by requiring agencies to publish the information and providing for a right of access to documents. This includes information held by Australian, Curriculum, Assessment and Reporting Authority (**ACARA**).

2.0 Purpose of this FOI Policy

This policy has been created, in accordance with s.8 of the FOI Act, to provide members of the public with information to allow them to effectively exercise their rights under the FOI Act. It provides a framework for balancing the public's right to access information held by the Government against protecting the privacy of individuals. An outline of the types of documents held by ACARA and the procedures for gaining access to those documents are provided in this policy.

3.0 How the FOI Act ties into the functions of ACARA including its legislative framework

ACARA is established under the *Australian Curriculum, Assessment and Reporting Authority Act 2008*, and is a prescribed authority to which the FOI Act applies.

4.0 Rights of applicants and obligations of decision-makers under the FOI Act

The FOI Act provides a prima facie right of access to all relevant records. It is up to ACARA to justify a denial of access, in a statement of reasons, and that can only be done by calling on one or more of the statutory exemptions.

5.0 Categories of documents held by ACARA

Some documents held by ACARA are generally available while others are available under the FOI Act.

6.3 Publicly available documents

A wide range of reports and publications are available to the public in electronic format, free of charge, through ACARA's website at <http://www.acara.edu.au>.

These include:

- Documents detailing the curriculum development process
- Consultation reports
- Position papers;
- Past papers; and
- Annual reports.

A telephone number and email address, provided both on the internet and in publications, can be used to contact ACARA to obtain free-of-charge copies of these documents.

Similarly, a variety of other publications relating to schools and education are available on the Department of Education, Employment and Workplace Relations website at <http://deewr.gov.au>.

5.2 Documents maintained by ACARA generally

A list of the categories of documents maintained by ACARA is included in our annual report available on our website.

5.3 Documents for which exemption may apply under FOI

While the FOI Act promotes openness and accountability in government decision-making, there are some categories of documents that are exempt from release. Documents that may have the potential to cause harm if disclosed, or are of a particular class that they are by their nature protected, are exempt. These categories of documents include:

- Cabinet documents (s.34)
- Documents subject to secrecy provisions in other legislation (s.38)
- Documents subject to legal professional privilege (s.42)
- Documents containing material obtained in confidence (s.45)
- Documents disclosure of which would be contempt of Parliament or contempt of court (s.46)

There are also some categories of documents that are conditionally exempt from release. That is, agencies are required to release conditionally exempt documents unless, in the circumstances, access to the document at the time would, on balance, be contrary to the public interest. These categories of documents include:

- Documents affecting Commonwealth-State relations (s.47B)
- Documents disclosing deliberative processes (s.47C)

- Documents affecting the financial or property interests of the Commonwealth (s.47D)
- Documents affecting certain operations of agencies (s.47E)
- Documents affecting the personal affairs of another person (s.47F)
- Documents concerning the business affairs of another person (s.47G)
- Documents relating to certain research (s.47H)
- Documents affecting Australia’s economy (s.47J)

ACARA may also decline to provide information that is available for public access by other means, including public registers, libraries, and documents available for purchase.

More information about the exemptions which ACARA may apply to preclude documents from release is available from the Office of the Australian Information Commissioner’s website: <http://www.oaic.gov.au/>.

6.0 Application Process

6.1 FOI Applications to be made to the FOI Coordinator

The role of the FOI Coordinator is to receive and manage FOI requests. The FOI Coordinator, upon receiving a request, will coordinate the process and ACARA's response.

1. Receipt of request

A valid request under the FOI Act must:

- 1) be in writing;
- 2) state that the request is an application for the purposes of the FOI Act;
- 3) provide sufficient information concerning the document, to enable the responsible officer of the agency to identify it; and
- 4) specify the FOI applicant’s contact details.

All FOI requests should be addressed to:

The FOI Coordinator

The Australian Curriculum, Assessment and Reporting Authority

Level 10, 255 Pitt Street

Sydney

NSW 2000

Or emailed to: info@acara.edu.au

Once a valid FOI request is received, ACARA must acknowledge the request in writing within 14 days of receipt.

Inquiries can be made by letter, telephone or in person. Email inquiries may be sent to info@acara.edu.au.

2. *Identification of the relevant documents*

The FOI Coordinator will consider the terms of the request and identify the relevant documents. The FOI Act applies to all documents in ACARA's possession, whether on file or not. The definition of 'document' is broad and includes electronic documents and email.

3. *Assessment of charges*

The rate of the charges is set out in Regulations made under the Act.

6.2 No application fee payable

From 1 November 2010, no application fee or internal review application fee is payable.

6.3 Processing charges

There is no charge if the applicant requests access to his or her personal information.

In some cases, the applicant will be liable to pay a charge to have the request processed.

Charges are *pro rata* to the hours of work involved in processing the application and will depend on the various activities involved in processing a request.

- The charge for locating documents (e.g. search and retrieval) is \$15 per hour.
- The first five (5) hours for ACARA's decision-making and consultation time with third parties is free. Each additional hour of time spent on decision-making and consultation with third parties is \$20 per hour.
- There are charges in relation to the provision of access, such as:
 - Photocopying: 10c per page,
 - Transcript: \$4.40 per page,
 - Supervised inspection: \$6.25 per half hour, and
 - Delivery: cost of postage or delivery.

6.4 Remission of charges

The applicant can request that the charges be waived ('remitted') in part or totally. The FOI Coordinator will consider the financial hardship incurred as a result of the applicant having to pay the charge, or whether granting access is in the general public interest or in the interest of a substantial section of the public.

4. *Making a decision*

The FOI Coordinator and the ACARA CEO are authorised under the FOI Act to make decisions regarding FOI applications.

The FOI Coordinator holds the primary responsibility for FOI decision making. The FOI Coordinator may, from time to time, refer FOI requests to the ACARA CEO, and provide advice and assistance throughout the decision-making process.

The decision maker will consider each requested document and assess its relevance and whether the document or any part of it is exempt.

A schedule of documents will be provided to the applicant listing the documents that the decision maker has assessed, accompanied by a statement of reasons for their release or otherwise.

5. *Notifying the applicant and releasing the documents*

The decision maker will notify the applicant in writing of the decision/s, and provide a copy of the schedule of documents and, where applicable, a schedule detailing the applicable charges. The applicant will have the choice of paying the charges and receiving copies of the documents (or inspecting the documents), or seeking an internal review of the decision/s.

6.5 How access to documents is granted

ACARA may give the applicant a copy or allow the applicant to inspect the documents.

If the applicant inspects the documents, ACARA will let the applicant know how, when and where the applicant can see them. This may be at the ACARA's office, or an Australian Government agency's office nearest to the applicant.

If the applicant has a preference, this should be specified when making the FOI request. Generally, access will be given in that form.

6. *Internal review*

The applicant has 30 days after being notified of the decision to seek an internal review. The review will be carried out by an officer at a higher level than the FOI Coordinator, and will start the decision-making process again.

Internal review is available for decisions in relation to the documents, and decisions in relation to charges, where the decision has been made by the FOI Coordinator. There is no internal review available of a decision made by the ACARA CEO.

If the decision is still in dispute following the internal review process, it is open to the applicant to appeal to the Information Commissioner. The period in which the applicant can appeal to the Information Commissioner is 60 days after the day that notice of the internal review decision was given to the applicant.

7. Information Commissioner

An applicant can appeal directly to the Information Commissioner without applying for internal review by ACARA.. The period in which the applicant can appeal to the Information Commissioner is 60 days after the day that notice of the decision was given to the applicant.

The function of the Information Commissioner is to review the merits of the following decisions made under the FOI Act:

- decisions made on the original FOI request;
- decisions made at the internal review stage;
- decisions to allow a further period for making an application for internal review; and
- decisions to grant access to a document, upon an application by an affected third party (see part 8.0 below).

The Information Commissioner may choose not to undertake a review in circumstances where the Information Commissioner is satisfied that:

- the application to the Information Commissioner is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;
- the applicant has failed to cooperate in progressing the review by the Information Commissioner without reasonable excuse;
- the applicant cannot be contacted after making reasonable attempts;
- the interests of the administration of the FOI Act make it desirable that the review be conducted by the Administrative Appeals Tribunal (AAT).

8. Further appeals

If the decision is still in dispute following review by the Information Commissioner, it is open to the applicant to appeal to the AAT. The function of the AAT is to review the merits of the decision. The period in which to appeal to the AAT from a decision of the Information Commissioner is 28 days.

A further right of appeal lies in the Federal Court, however only on points of law.

7.0 Transfer of FOI Applications between agencies under s.16 of the FOI Act

Where documents are sought that belong to or are more closely associated with another agency, or are not in the possession of ACARA but are thought to be in the possession of another agency, the FOI Coordinator can make arrangements to transfer all or part of the request to that other agency.

8.0 Third party information

The FOI Act in some cases requires that the view of third parties be sought in relation to decisions on access when information about them is contained in requested documents. These third parties include identifiable individuals, State and Territory governments, and commercial bodies.

Third parties, except other Australian government agencies and foreign governments may dispute a decision to release documents containing information on them and request an internal review or appeal directly to the Information Commissioner.

8.1 Personal Information

In some cases requested documents may contain personal information about an identifiable individual. 'Personal information' is defined as information or an opinion, whether true or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. Examples of personal information include:

- personal contact details such as an email, street address or phone number;
- information about family and marital relationships;
- information about a person's private life and circumstances.

A document does not contain personal information just because it:

- records a policy, or contains information about an activity which impacts on you
- refers to your name
- contains information about your professional and/or business affairs.

The FOI decision-maker must consider whether there are reasonable grounds for the individual, or his or her successors, to claim that the information is exempt as an unreasonable disclosure of personal information (s.47F). Factors in assessing whether the individual should be consulted include:

- how well known the information is already,
- whether the person is known to be associated with the matters dealt with in the document

- the availability of the information from publicly accessible sources, and
- any other matters the FOI decision-maker believes are relevant in the circumstances.

Where the FOI decision-maker believes consultation is required, the subject person or their legal personal representative must be given a reasonable opportunity to make submissions, and the FOI decision-maker must consider those submissions before making a decision on the documents.

Following consultation, if it is decided that disclosure would not be unreasonable, the decision-maker must inform the individual of this decision in writing and of the right to seek internal review or to apply to the Information Commissioner. No access to the records will be granted to the applicant until either:

- the period in which the third party can apply for internal review (30 days); or
- the period to appeal to the Information Commissioner has expired (60 days), or
- if applicable, the period to appeal to the AAT from the decision of the Information Commissioner has expired (28 days).

9.0 Reporting Requirements

The FOI Coordinator is responsible for the compilation of statistics required by the Department of the Prime Minister and Cabinet for inclusion in the Annual FOI Report to the Parliament.

10.0 Further information

If you would like further information about making an FOI request or about the FOI Act generally, information is available on the Office of the Australian Information Commissioner website at: <http://www.oaic.gov.au/>.