



Australian Government  
Australian Taxation Office

# Accessing information under the Freedom of Information Act | 07



Taxpayers' Charter

## Our commitment to you

We are committed to providing you with advice and information you can rely on.

If you feel this publication does not fully cover your circumstances, please seek help from the Tax Office or a professional adviser.

### **The information in this publication is current at November 2018.**

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at [ato.gov.au](http://ato.gov.au) or contact us.

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NAT 2554-11.2018 C297-00008

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The *Freedom of Information Act 1982* (FOI Act) requires we publish documents we use in making decisions. The FOI Act gives you the right to access other documents we hold, including documents that contain information about you.

You can ask us to correct information we hold about you if it is:

- incomplete
- incorrect
- out of date
- misleading.

## You may not need to make an FOI request

There are documents you are able to access without making an FOI request. For example, you can get a copy of your recent notices of assessment or tax returns by completing a *Copies of tax documents request form*, which you can find on our website, [ato.gov.au](http://ato.gov.au)

You can also access documents and policies that we use in decision making such as:

- taxation rulings
- determinations
- decision impact statements
- law administration practice statements.

You can access these documents by searching our website. Select the 'legal database' box above the search field.

For more information, see Taxpayers' Charter – Help you to get things right (QC 18607).

## Making an FOI request

To request FOI information use our *FOI request form* to ensure you respond to all requirements.

For a copy of the form, visit [ato.gov.au](http://ato.gov.au) and search for 'FOI form' or 'QC 17369'.

To request access to documents, the request must:

- be sent to us in writing
- state the request is being made under the FOI Act
- provide enough information for us to identify the documents
- specify an address for us to reply to.

We must acknowledge our receipt of your request within 14 days. We must give you our decision and reasons for the decision within 30 days. If we are not able to provide a decision in 30 days – for example, if you have asked for a large number of documents, we will seek to negotiate an extended time with you or the Australian Information Commissioner.

If we have to discuss the request with someone else – for example, if you ask for a document that contains information about them, we have a further 30 days to tell you our decision.

If we do not meet these timeframes, we are deemed to have refused your request. You can then ask the Australian Information Commissioner to review our decision.

For more information, visit the Australian Information Commission website at [oaic.gov.au](http://oaic.gov.au)

## Costs involved

The cost of FOI requests is set by the law.

There are generally no charges for FOI requests for access to documents containing only personal information about you.

There may be charges involved for accessing other types of documents if the request is voluminous or complex.

For more information, visit [ato.gov.au](http://ato.gov.au) and search for 'FOI form' or 'QC 17369'.

## Why you may be unable to access some documents

In some situations, we may not grant you access to documents. In this regard, the Australian Information Commissioner has published guidelines to help us make fair and consistent decisions about requests under the FOI Act. A major reason for not being permitted access to some documents is that they are exempt from the FOI Act.

Exempt documents include those where disclosure of the documents or the information in them:

- could reasonably be expected to prejudice an investigation
- could reasonably be expected to prejudice the proper administration of the law or the proper and efficient conduct of our operations
- would involve the unreasonable disclosure of personal information of another person or constitute a breach of confidence
- is prohibited under other legislation, for example, under the tax law secrecy provisions
- is subject to legal professional privilege
- relates to government deliberative processes
- is contrary to the public interest.

If we decline your request to access documents for any reason, you can have that decision reviewed.

Sometimes we may give you a document with some material deleted. We will tell you why. You can have our decision reviewed.

## Company directors and taxpayer information about companies

If you are a director or former director of an insolvent company, we may not be able to give you information about that company.

This is because a company and each of its directors are separate legal entities.

As ATO officers, we must comply with strict taxpayer confidentiality provisions outlined in Division 355 of Schedule 1 to the *Taxation Administration Act 1953*. This prohibits the disclosure of information about an identifiable entity, except in circumstances specified in the confidentiality provisions.

The confidentiality provisions prevent ATO officers from disclosing information about a company to one of its directors.

However, the confidentiality provisions permit an ATO officer to disclose information to 'covered entities'. These differ for solvent and insolvent companies in accordance with taxation law. A solvent company 'covered entity' is either the appointed public officer or a nominated representative.

An insolvent 'covered entity' is the administrator or liquidator, or a representative nominated by the administrator or liquidator.

An ATO officer may disclose information about a company (whether solvent or insolvent), to someone other than the company's 'covered entity', to assist in the administration of taxation laws. For example, if a company's tax affairs impact on the tax obligations of a company director, company information may be disclosed to enable the director to comply with their own taxation obligations.

If you wish to access information held by the ATO about a company, you should start by talking with the ATO representative you've been dealing with. If you haven't had any recent contact with the ATO, phone us on **13 28 66**.

## Changing your personal information

You can ask us to change the personal information we hold about you if you have had access to the document and you believe the information is:

- incomplete, incorrect, out of date or misleading
- used for an administrative purpose.

You do not have to pay a fee for this request.

Your request must be in writing and, as far as possible:

- give details of the document and the information you believe is incomplete, incorrect, out of date or misleading
- give reasons why you are asking for the amendments
- state what the information should be
- provide an address in Australia for us to reply to.

We must give you our decision and the reasons for that decision within 30 days of receiving your request. We can ask the Australian Information Commissioner for more time. If we do not meet these timeframes, we are deemed to have refused your request. If your request for a change is refused, or if the change we make differs from what you requested, you can ask us to review our decision. You can then ask the Australian Information Commissioner to review our decision.

## Adding a note to your information

You can ask us to add a note in the information we hold about you to include:

- the information you are concerned about
- whether you believe the information is incomplete, incorrect, out of date or misleading
- your reasons for the claim
- any other information you consider will correct this.

As long as your note is relevant, is not defamatory or unnecessarily long, we will add it to our information about you.

You can apply to us to add to, rather than change, the information about you. There is no fee for this.

If we refuse to change or add a note to your personal records, the decision may be reviewed by us or by the Australian Information Commissioner.

## How long do we keep your information?

Under the law, we hold your information for a fixed period.

Different kinds of information are kept for different lengths of time. Some examples are:

- tax returns – for most people we keep these for five years after the date of assessment
- audit papers – we keep these for five years after the case is finalised (except deliberate evasion cases)
- debt collection files – we keep these for five to seven years after the last action.

# Explaining and reviewing our decisions

## Explaining our decisions

We must provide you with the reasons for our decision within 30 days of receiving your request if we refuse to:

- allow you access to a document
- amend your personal information
- waive or reduce the amount of any charges.

We may contact you to discuss a varied timeframe with you or as allowed by law. We will tell you how to have the decision reviewed.

## Reviewing our decisions

You can request an internal review if you disagree with our decision. There are limited exceptions for declining a request for review, for example, if the Commissioner of Taxation made the decision.

Your request must be in writing and should be sent within 30 days of you receiving our decision.

If you cannot request a review within 30 days, you can apply for an extension. Your application should include the reasons why you are unable to seek a review within 30 days.

A tax officer not involved in the original decision will conduct the review.

We try to give you a decision and our reasons within 30 days of receiving your request. If this is not possible, we may negotiate with you or apply to the Australian Information Commissioner for an extension. We will let you know if this is granted. If we have not given you our decision on the review at the end of the extension, we are deemed to have confirmed our original decision. You can then ask the Australian Information Commissioner for a review.

For more information, visit [ato.gov.au/DisputeResolution](https://ato.gov.au/DisputeResolution)

## Review by the Australian Information Commissioner

You can apply to the Australian Information Commissioner for a review of our:

- original decision (even if you have not asked us for an internal review)
- review decision.

You can apply for a review, if we have taken longer than agreed with you (or approved by the Australian Information Commissioner) to make a decision:

- about your application for access to documents
- on your request for an internal review.

For more information, visit the Australian Information Commission website at [oaic.gov.au](https://oaic.gov.au)



## Further review and appeal rights

If you are concerned about the actions we are taking in processing your FOI request, or the time taken, you should tell the tax officer you are dealing with. If you can't resolve the issue with the officer, tell that officer's manager. If you are not satisfied with the way your concerns have been addressed you can have them independently reviewed by phoning our complaints line on **1800 199 010**.

You may be able to take your matter to the Administrative Appeals Tribunal, the Federal Court and the High Court of Australia.

See also 'Respecting your right to make a complaint' in Taxpayers' Charter – What you need to know (QC 18266).

For more information about your further review and appeal rights, visit the:

- Administrative Appeals Tribunal website at **aat.gov.au**
- Federal Court website at **fedcourt.gov.au**
- High Court website at **hcourt.gov.au**

**ato.gov.au**