



Freedom of information (FOI)

The Tribunal's obligations under the FOI Act

The National Native Title Tribunal has certain statutory obligations under the Commonwealth *Freedom of Information Act 1982* (FOI Act). Upon receipt of a request under the FOI Act, the Tribunal may:

- provide access to documents (as defined in the FOI Act) in possession of the Tribunal, whether created in or received by the Tribunal
- protect individual privacy, by allowing a person to have corrected any incomplete, incorrect or dated personal information held by the Tribunal (for example, a person's personnel records).

The President of the Tribunal (or a person authorised by him) will make decisions about FOI applications. Some documents may be exempt from disclosure under the FOI Act. This is also a matter for the President or authorised officers to decide.

If you have any questions regarding the Tribunal FOI process contact the Tribunal's Freedom of Information contact officer on freecall 1800 640 501, or email us on foi@nntt.gov.au.

If you wish to find out more about FOI see the Freedom of Information page on the Office of the Australian Information Commissioner's website, www.oaic.gov.au.

Access to documents under FOI

Who can make an FOI request?

Any person can make an FOI request, so long as the request is validly made in writing.

What types of documents are covered by FOI?

All documents (whether originals or copies) in the Tribunal's possession, whether temporarily or permanently, and whether created by the Tribunal, or merely received by it from another party, are covered by the FOI Act, other than exempt documents.

What kinds of documents can you access under FOI?

Under the FOI Act, a 'document' is defined to include:

- maps
- drawings and photographs
- tables

- sound and video recordings
- computer discs
- information stored on the computer hard drive itself.

How can you make an FOI request?

An FOI request must be made in writing to the Tribunal. The request should contain enough information to identify the documents which you want to access. Where an unclear request is made, the Tribunal is obliged to take reasonable steps to assist people to identify the documents they seek to access.

How much do you have to pay when you make an FOI request?

There are no application fees. No costs apply where a person requests access to their personal information and no charges apply if the FOI statutory timeframe is not met. Charges may be payable (usually on an hourly rate) for time spent by the Tribunal in locating the documents requested, and granting access. If this is applicable, you will be notified by the Tribunal of an estimate of these additional charges.

Fees may be payable under FOI. For more information, please see the [guidelines](#) issued under section 93A of the FOI Act available on the Office of the Australian Information Commissioner's website.

Can charges for FOI requests be waived?

The fees normally payable for FOI requests may be reduced, waived or remitted by the Tribunal in particular cases. For example, the fees may be waived or remitted if you can show that payment of the FOI fees will cause you financial hardship, or that it is in the public interest to give access to the document without charging full or any fees.

What happens after you make an FOI request in writing?

The Tribunal must take all reasonable steps to notify you that it has received your request within 14 days of receiving your FOI request.

The Tribunal must make a decision in relation to your FOI request within 30 days of the date of receiving your request. If the Tribunal requires an extension of time for a further 30 days, you will be notified as soon as practicable.

If the documents you have requested concern another person, the Tribunal must write to that other person to seek their comments before making a decision about your FOI request. If this is the case, the Tribunal will write to you and tell you that it is consulting with other persons. If this happens, then after consulting with those other persons, the Tribunal must make a decision about your FOI request within 60 days of receiving your FOI request.

Why might the Tribunal need to consult with third parties before making a decision in relation to your FOI request?

Where information in a document concerns another person, and where an exemption (or conditional exemption) under the FOI Act may apply to disclosure of that information, the Tribunal must consult with that person, to find out whether or not they have any objection

to the release of that information to you under the FOI request. For example, a person may oppose the release of documents falling within the FOI request on the basis that the documents contain personal information or confidential business information.

After consulting with that other person, the Tribunal may decide that the document is not exempt (or conditionally exempt as the case may be), despite any objections that person might have had to release of the documents under FOI. If this is the case, the objectors must be notified of the Tribunal's decision to release the documents, and provided with written reasons for the decision.

The Tribunal cannot give access to any of the disputed documents until after the objectors have had an opportunity to exercise their rights of review if they feel that the information should not be released.

The objectors have 30 days from the date of the Tribunal's decision to release documents to apply to the Tribunal for an internal review of that decision, or to make a review application to the Administrative Appeals Tribunal (AAT). If the objectors apply for internal review, and are dissatisfied with the result of that internal review, they have another 30 days from the date of being given notice of the review decision to apply to the AAT for a review of that decision.

If the objectors do not make any review applications within these timeframes, the Tribunal may proceed to give you access to the documents in accordance with your application.

Who makes a decision in relation to your FOI request?

Under the FOI Act, the President and any officers he authorises can make decisions concerning FOI requests made to the Tribunal. The decision-maker is identified in any reasons that must be provided under the FOI Act. Where an application for internal review of the primary decision has been made, a different decision-maker undertakes the review.

Not all documents are available under FOI

The grant of a broad right of access to the public in relation to documents held by Commonwealth agencies is reduced by some statutory exemptions and conditional exemptions. The public interest conditional exemptions provide for access to be given unless it would, on balance, be contrary to the public interest.

The exemptions provide certain grounds for refusing disclosure of documents to people who make FOI applications. There may be more than one exemption that applies to a document.

The exemptions will be applied to protect essential public interests (including the proper functioning of the Tribunal), documents containing material obtained in confidence and the private and business affairs of third persons.

The Tribunal may refuse to process a request where to do so would substantially and unreasonably divert the resources of the agency. This may arise if, for instance, a request is made for 'all documents relating to native title claims and pastoral leases in any of the

Tribunal's files'. The Tribunal must first give you an opportunity to consult with it in an effort to reduce the request to a manageable size.

Public interest test

A new single public interest test weighted towards disclosure now applies to a greater range of exemption categories. The FOI Act lists certain factors favouring access in the public interest. Factors favouring disclosure include promotion of the objects of the FOI Act and informing debate on matters of public importance. Factors which are not conducive to open and accountable government, including potential loss of confidence in or embarrassment to the government, may no longer be used to support non-disclosure.

Decision makers are now required to ensure the public interest factors are taken into account when they give reasons for their decision.

Examples of some of the exemptions under the FOI Act which may apply to certain documents:

Documents containing:

- confidential information
- legal professional privileged communications
- information which might affect enforcement of law and protection of public safety
- information which might affect national security

Examples of some public interest conditional exemptions under the FOI Act which may apply to certain documents

A document is conditionally exempt if disclosure would, or could reasonably be expected to:

- cause damage to relations between the Commonwealth and a State
- unreasonably affect business or professional affairs
- involve the unreasonable disclosure of personal information about any person (including a deceased person)
- would disclose matter (deliberative matter) in the nature of advice or recommendations prepared or consultation or deliberation that has taken place in the deliberative processes involved in the functions of an agency, or minister

Viewing documents to which you have been granted access under FOI

The Tribunal may provide you with access to documents in a variety of forms, including:

- inspecting the hard copy document
- providing a copy of the document
- allowing you to listen to or view a 'document' which is in the form of a video or audio tape;
- providing a transcript of a document
- providing access to electronic copies of documents stored on a computer.

The Tribunal may also grant access to edited forms of requested documents, with any exempt or irrelevant material deleted in the copy supplied to you as the applicant.

What happens if the Tribunal decides not to give access to documents in accordance with your FOI request?

If the President or any authorised officer denies access to requested documents under FOI, they must do certain things, including providing written reasons for that decision, setting out:

- the findings on material questions of fact and the material on which those findings were based
- the public interest factors taken into account in the decision
- information about your rights of review with respect to the decision
- the name and designation of the decision-maker
- whether any irrelevant or exempt matters have been deleted from a document, and the ground for the deletion

You may, within 30 days of being given notice of the Tribunal's decision, ask for an internal review of the decision by a person other than the original decision-maker. The Tribunal may extend this timeframe. The review will be conducted by someone other than the original decision-maker. The reviewer will consider your FOI review request from the beginning.

If you are dissatisfied with the outcome of the internal review, you may apply to the Administrative Appeals Tribunal (AAT) within 60 days of the date of being notified of the original decision made by the Tribunal for a review of the final decision of the Tribunal. This timeframe may be extended by the AAT.

If you are applying for access to documents under FOI and are unhappy with the Tribunal's decision, you must apply for internal review before you can apply to the AAT.

The review rights for third parties are different. If you are a third party who does not wish to have certain documents disclosed, you can either apply for an internal review of the Tribunal's decision within 30 days of being given notice of that decision, or apply directly to the AAT for a review of the Tribunal's decision. If you are still dissatisfied with the outcome of the Tribunal's review decision, you then have another 30 days from the date of being given notice of the review decision to apply to the AAT for a review of the Tribunal's decision.

There is no fee for an application for internal review. The fee for an application to the AAT and further information is available from the Administrative Appeals Tribunal (AAT) at www.aat.gov.au. No fee is payable if the decision under review relates to a decision under Schedule 3 of the *Administrative Appeals Tribunal Regulations 1976*.

You can also ask the Information Commissioner to review the Tribunal's decision. The Information Commissioner may perform the same functions and exercise the powers of the person who made the reviewable decision and the Information Commissioner's decision has

the same effect. For more information, see the Office of the Australian Information Commissioner's website, www.oaic.gov.au.

Amendment and correction of personal records

Under the FOI Act, you can also apply to the Tribunal for an amendment or annotation of your personal information that is contained in a document of the Tribunal, in the following circumstances:

- access to the document must have been provided to you lawfully (e.g. pursuant to the access provisions of the FOI Act)
- the information in question must be incomplete, incorrect, out of date or misleading
- the information must have been used, or be in use, or be available for use, by the Tribunal for administrative purposes

What kinds of personal records does the Tribunal hold?

Some of the types of records that the Tribunal holds which may contain personal information include:

- the various registers which the Tribunal keeps under the *Native Title Act 1993* (Cwlth)
- personnel records
- recruitment and position files
- performance appraisal assessments and ratings
- administrative files
- litigation files
- accident, rehabilitation, compensation and medical records
- application and objection files

How can you have your personal records corrected?

If you want to correct your personal information, you must apply in writing to the Tribunal, explaining why the information held by the Tribunal is inaccurate, and state the amendment sought.

The amendment may consist of a correction of documents, or an annotation to documents. There is no fee for the amendment of your personal records.

What happens after you make a request in writing to have your records corrected? The Tribunal must tell you what it has decided in relation to your request within 30 days. The Tribunal may correct your personal information, but is not bound to use the particular correction you provide.

What if the Tribunal does not fully comply with the request for amendment of your personal records?

If the Tribunal has decided not to make the changes you have requested, it must tell you why, and inform you of your rights of review. You may ask another person in the Tribunal

to review your application for amendment or annotation of your personal records (internal review) within 30 days of being notified of the Tribunal's decision.

If you are still dissatisfied with the outcome of the review, you may apply to the Administrative Appeals Tribunal for a review of that decision within 60 days of the date of the Tribunal's original decision.

If the Tribunal does not fully comply with your request for amendment, you may provide a statement recording your version of the facts and your opinion of the inaccuracy of the document in its unaltered state. This annotation must be placed on your file, so long as it is not considered to be irrelevant, defamatory or too long.