



Australian Government  
Department of Employment

# GUIDE TO ACCESSING AND CORRECTING YOUR PERSONAL INFORMATION

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## 1 Introduction

There are a number of mechanisms you can utilise to access your personal information held by 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and your options for correcting that information in the event that you consider the information to be inaccurate, out of date, incomplete, irrelevant or misleading.

## 2 Access to personal information under the Privacy Act

### 2.1 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).

### 2.2 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 held by the Department as well as any personal information about you held by one of the Department's contracted service providers.

### 2.3 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@employment.gov.au](mailto:Privacy@employment.gov.au) or by writing to:

Privacy Contact Officer  
Corporate Legal  
Location C12MT1  
Department of Employment  
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 either by providing you with access to the personal information as requested (APP 12.4), or by notifying you of our refusal to give you access (APP 12.9). 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 post, telephone or email (APP 12.4).

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

#### **2.4 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 personal information, the Department will need certain information from you. The information required will likely depend on the interactions you have had with the Department. Typically, however, you may be asked to provide your name, date of birth, address, jobseeker ID, or such other information as the Department requires to identify you.

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.

#### **2.5 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).

## **2.6 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 30 calendar 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 Complaint Handling Policy](#).

### **Complain to the 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 (or +61 2 9284 9749 if calling from outside Australia)

### **Complaint to the 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.

## **3. Access to personal information under the FOI Act**

### **3.1 What does the FOI Act say?**

It is open to you to lodge an FOI request with the Department as an alternative to lodging a request under the Privacy Act. 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).

### **3.2 What can I access?**

A request under the FOI Act can relate to any document in the possession of the Department. The right of access under the FOI Act, unlike that under 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 charge may apply.

### **3.3 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).

There is no charge applicable for seeking access to your personal information under the FOI Act. Applications to the Department may be sent to the Department in one of the following ways:

**Via email to the following address:** [foi@employment.gov.au](mailto:foi@employment.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 this Department specified in a current telephone directory.

The Department prefers that you mail your request to the following address:

FOI Team  
Corporate Legal  
Department of Employment  
C12MT1  
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's website at:

<http://docs.employment.gov.au/pages/how-make-freedom-information-foi-request>

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). This timeframe may be extended for an additional 30 days in the event that the Department is required to consult with a third party (subsection 15(6) of the FOI Act).

### **3.4 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.

### 3.5 When can the Department refuse to give you access?

The FOI Act sets out a number of grounds upon which the Department can refuse to release documents, in full or in part. Examples include, but are not limited to, documents which:

- contain the personal information of people other than you
- contain the business information of third party organisations which it would be unreasonable to release
- are subject to legal professional privilege.

If the Department refuses your request for access on one of the grounds, it will provide you with a statement of reasons.

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

#### Internal review

You can apply to the Department for an internal review of a decision on access (section 54 of the FOI Act). 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 (see section 3.3 above).

#### Review by Information Commissioner

Alternatively, you can apply directly to the Information Commissioner to seek a review of the Department's decision (section 54L of the FOI Act). 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 merits review form available on the OAIC's website at [www.oaic.gov.au](http://www.oaic.gov.au), 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 at <http://www.oaic.gov.au/> or by contacting the OAIC on 1300 363 992.

#### Review by Commonwealth Ombudsman

You can complain to the Commonwealth Ombudsman concerning action taken by the Department in the exercise of powers or the performance of functions under the FOI Act. A complaint to the Commonwealth Ombudsman may be made orally or in writing. The Ombudsman may be contacted on 1300 362 072. The Ombudsman generally prefers complaints to be made to the OAIC in the first instance (unless the complaint concerns the OAIC).

## **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 a request under the Privacy Act, to be valid an FOI access request must meet certain legislative requirements;
- an FOI access request can be broader than your own personal information - it can relate to any document in the possession of the Department (although charges may apply – see 3.2 above);
- under the FOI Act, the Department may be required to consult with third parties (such as businesses) to give them an opportunity to contend that certain information about them or their business affairs should be exempt from release;
- 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.

## **4. Administrative arrangement – employment services**

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 receiving services from one of the Department's employment service providers you can ask the provider for access to some or all of your personal information. There are, however, some circumstances where your employment service provider may direct you to the Department so your request for access can be considered under the FOI Act.

## **5. Correcting personal information under the Privacy Act**

### **6.1 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 incorrect or where it receives a request from an individual to correct their personal information. To assist the Department to consider your request, you should provide as much

information as possible.

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

There are no formal requirements, and no charges, for 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@employment.gov.au](mailto:privacy@employment.gov.au) or by writing to:

Privacy Contact Officer  
Corporate Legal  
Location C12MT1  
Department of Employment  
GPO Box 9880  
Canberra ACT 2601

The Department will respond to your correction of personal information request within 30 calendar days after the request is made (APP 13.5).

## **6.3 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).

## **6.4 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.

# **6. Correcting personal information under the FOI Act**

## **7.1 What does the FOI Act say?**

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)(section 48 of the FOI 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.

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

An application for an amendment or annotation under the FOI Act must:

- be in writing;
- specify:
  - the document containing the record of personal information that is claimed to require amendment or annotation;
  - the information that is claimed to be incomplete, incorrect, out of date or misleading;
  - whether the information is claimed to be incomplete, incorrect, out of date or misleading; and
  - your reasons for so claiming; and
  - the amendment requested, or, if you are seeking an annotation, such other information as would make the information complete, correct, up to date or not misleading;
- 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. Please see section 3.3 above for further detail on how applications can be sent to 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).

## **7.3 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 for why you consider the record is incomplete, incorrect, out of date or misleading (section 51 of the FOI Act).

## **7.4 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 under the FOI Act, the review mechanisms discussed in section 3.6 above are available to you.

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

There are key differences between requesting information under the Privacy Act and requesting it under the FOI Act which you may like to consider before you elect to apply for correction of your personal information. These key differences are briefly highlighted below:

- The Privacy Act 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);
- There are more formal requirements for making an application for correction of personal information under the FOI Act, whereas APP 13.1 only requires you to request that the Department correct your personal information (though it may not be able to do so if you do not provide sufficient information in support of your request, for example what information you consider incorrect);
- 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 (see sections 7.1 and 7.2 above);
- 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.