

"Navigate GMP with DBA"*



David Buckley & Associates Pty Ltd ACN 103 221 129, ABN 69 103 221 129
www.navigategmp.com info@navigategmp.com

Freedom of Information - FOI

Australia makes it remarkable easy and cheap for its citizens to access government information, within a reasonable period of time and with appeal mechanisms that work! FOI is enshrined in law – download a free copy from http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222.txt The object of the *Commonwealth Freedom of Information Act 1982* is to extend, as far as possible, the Australian community's right of access to information in the possession of the Commonwealth. (By the way every State and territory has similar laws) The Act applies to the documents held by the majority of Commonwealth agencies. It also applies to documents held by Ministers that relate to the affairs of Commonwealth agencies.

Making an application under the Commonwealth Freedom of Information Act 1982 (FOI Act)

It's easy to apply for access to one or more documents under the FOI Act, your application must:

1. Be in writing (note, no special form, no phone calls);
2. Describe the document/s you're seeking, so that the government can readily identify them;
3. Give an Australia address so notices under the FOI Act may be sent to you;
4. Be posted or delivered to the government department; and
5. Enclose a \$30 application fee - some agencies charge \$40 – the scoundrels – check first (or include a request that the fee be remitted with your reasons and evidence in support). In addition to the application fee, charges may be imposed for the time spent in searching for and retrieving relevant documents, decision-making time, photocopying and postage.

The government department must make decisions within 30 days, extended if consultations are required. Access to a document may be refused if the document is within an "exception" (e.g. the document is available to the public for a fee or other charge) or exemption specified in the FOI Act.; eg files that are marked "Commercial-in-Confidence", "Cabinet-In-Confidence", etc. But check: sometimes only the "commercial" bits in the first sort of files are confidential. Such as the regulatory details, formulae, equipment, manufacturing processes, etc.

Most government agencies have a page on how to make an FOI request but not all! eg <http://www.ato.gov.au/content/downloads/n2877.pdf>

Typical Costs

Staggeringly low – today's only real bargain, where else could you get a medical-legal expert for \$6.25/half hour! The costs relating to an FOI request are (but check!):

1. Application fee \$30.00 (maybe more – check!)
2. Search and retrieval of documents \$15.00 per hour (Crikey, TGA charges \$900.00/hour per auditor for overseas inspections)

3. Decision-making/consultation \$20.00 per hour (most consultants charge >\$150/hour)
4. Photocopying documents 10 cents per page – that’s half the price at your local pharmacy!
5. Postage actual cost – no handling charges!
6. Supervised inspection of documents (edited, if necessary, prior to inspection) \$6.25 per half hour or part
7. Internal reviews \$40.00
8. Requests for documents containing only personal information will be charged at a maximum of 2 hours for search and retrieval time and 2 hours for decision making time, plus other charges at the rates specified above.

Deposits

Where the estimated charge exceeds \$25.00, they may ask you to pay a 25 per cent deposit before your request is processed – the scallywags, they don’t trust you!

Free FOI

You can ask for fees and charges to be waived for any reason, including financial hardship or **public interest!** Pro bono publico, in the public interest! If you request the usual fee and/or charges to be reduced or waived in full, you must provide evidence to support this request.

Processing time

You should receive an answer within 30 days from the date of receipt of your request.

Outcomes and Appeals

When the government department has made a decision about your FOI request or request for internal review, they have to send you a letter outlining the decision and your review and appeal rights. If it refuses your request you can appeal. You can appeal against the following decisions:

- o refusal to give you access to all or part of a document
 - o refusal to remit or waive all or part of an application fee
 - o imposition of a charge upon you
 - o the amount of a charge imposed upon you
1. You can request the government department reconsider a decision through an internal review. They have to advise you of the new decision within 30 days from the date of receipt of your request. Unless it has agreed to waive the application fee, \$40.00 is payable.
 2. You can appeal to the Administrative Appeals Tribunal within 60 days of the date of the decision on the internal review. An application fee of \$574.00 applies and may be subject to change. The AAT may waive this fee in certain circumstances.
 3. You can complain to the Ombudsman who may investigate the government department’s actions in processing your request or internal review. The Ombudsman may make recommendations but cannot change the government department’s decision.
 4. You cannot lodge an appeal with the AAT while the Ombudsman is investigating a complaint from you about the decision you wish to appeal.

The David Buckley & Associates’ (DBA) web site is provided to you free of charge, “as is” without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement. In no event shall DBA be liable for any damages whatsoever, including special, indirect, consequential or incidental damages or damages for loss of profits, revenue, use, or data whether brought in contract or tort, arising out of or connected with any DBA web site or the use, reliance upon or performance of any material contained in or accessed from any DBA web site. All information in this article is intended for your general knowledge only and is not a substitute for expert advice. Neither David Buckley & Associates Pty Ltd nor any of their employees or associates, makes any warranty, express or implied, including warranties of merchantability and fitness for a particular purpose, or assumes any legal liability for the accuracy, completeness, or usefulness of any information from this document. The opinions expressed are those of the author. The article is intended as a general discussion of legal and other issues concerning due diligence. Advice given on issues is not legal advice or a legal opinion. It is suggested all persons seek independent counsel to act upon any laws discussed in this article.