



Australian Capital Territory

# Freedom of Information Amendment Act 2007

A2007-5

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Australian Capital Territory

# Freedom of Information Amendment Act 2007

A2007-5

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An Act to amend the *Freedom of Information Act 1989*

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

**1 Name of Act**

This Act is the *Freedom of Information Amendment Act 2007*.

**2 Commencement**

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

This Act amends the *Freedom of Information Act 1989*.

**4 Interpretation for Act  
Section 4 (1), new definition of *personal information***

*insert*

*personal information* means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**5 Pt 3 not to apply to certain documents  
Section 11 (2) (a)**

*omit*

information relating to the personal affairs of that person

*substitute*

personal information about the person

---

**6 Time within which requests to be decided**  
**Section 18 (4)**

*substitute*

- (4) The period of 30 days mentioned in subsection (1) (d) must be extended by 30 days if the agency or Minister to whom the request was made determines, in writing, that the requirements of section 26, 27 or 27A make it appropriate to extend the period.

**7 Requests may be refused in certain cases**  
**Section 23 (1)**

*substitute*

- (1) An agency or Minister may refuse to grant access to documents in accordance with a request without processing the request if—
- (a) the request is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and
  - (b) the agency or Minister is satisfied that the work involved in giving access to all documents to which the request relates would substantially and unreasonably—
    - (i) divert the resources of the agency from its other operations; or
    - (ii) interfere with the performance by the Minister of his or her functions.
- (1A) In deciding, for subsection (1), whether to refuse to grant a request, the agency or Minister—
- (a) must have regard to the number and volume of the documents and the resources that would have to be used in—
    - (i) identifying, locating and collating the documents (including documents held in the Minister's office or by contractors outside the agency); and

- (ii) examining the documents and consulting on the documents with any entity in relation to the request; and
  - (iii) copying the documents; and
  - (iv) preparing an itemised schedule of the documents; and
  - (v) notifying the applicant of any interim or final decision on the request; but
- (b) must not have regard to—
- (i) any fee or charge payable for processing the request; or
  - (ii) any reason that the person requesting access gives for requesting access; or
  - (iii) the agency's or Minister's belief as to the person's reasons for requesting access.
- (1B) Subsection (1A) (a) does not limit the matters the Minister may have regard to.

**8 Procedure on request in respect of documents likely to affect relations between the Territory and the Commonwealth or a State**  
**New section 26 (2) (b) (ia)**

*insert*

- (ia) an application has been made but the tribunal has dismissed the application under the *Administrative Appeals Tribunal Act 1989*, section 43 or section 43A or made a decision mentioned in that Act, section 43B; or

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**9 Procedure on request in respect of document relating to business affairs etc**  
**New section 27 (2) (b) (ia)**

*insert*

- (ia) an application has been made but the tribunal has dismissed the application under the *Administrative Appeals Tribunal Act 1989*, section 43 or section 43A or made a decision mentioned in that Act, section 43B; or

**10 New section 27A**

*insert*

**27A Procedure on request in relation to document containing personal information**

- (1) This section applies if—
- (a) a request is received by an agency or Minister in relation to a document containing personal information about a person (including a person who has died); and
  - (b) it appears to the person dealing with the request that the person mentioned in paragraph (a), or if that person has died, the person's legal representative, might reasonably wish to submit that the document is an exempt document under section 41 (Documents affecting personal privacy) so far as it contains personal information.

- (2) A decision to grant access under this Act to the document, so far as it contains the personal information, must not be made unless, if it is reasonably practicable to do so having regard to all the circumstances (including the application of section 18)—
- (a) the person dealing with the request has given the person or the legal representative of the person, a reasonable opportunity to make a submission that the document, so far as it contains the personal information, is an exempt document under section 41; and
  - (b) the person making the decision has considered any submission made in relation to the request.
- (3) In deciding, for subsection (1), whether a person might reasonably wish to submit that a document, so far as it contains personal information, is an exempt document under section 41, the person dealing with the request, must have regard to the following:
- (a) the extent to which the personal information is well known;
  - (b) whether the person to whom the personal information relates is known to be associated with the matters dealt with in the document;
  - (c) the availability of the personal information from publicly accessible sources;
  - (d) anything else the person dealing with the request considers relevant.
- (4) If, after any submissions have been made in accordance with subsection (2), a decision is made that the document, so far as it contains the personal information, is not an exempt document under section 41—
- (a) the person dealing with the request must notify the following people, in writing, of the decision:
    - (i) the person who made the request;



- 
- (ii) a person who made a submission in relation to the request; and
  - (b) access must not be given to the document, so far as it contains the personal information, unless—
    - (i) the time for an application to the tribunal by that person in accordance with section 69A (Review of certain decisions about documents relating to personal affairs) has expired and an application to extend the application period has not been made; or
    - (ii) an application has been made but the tribunal has dismissed the application under the *Administrative Appeals Tribunal Act 1989*, section 43 or section 43A or made a decision mentioned in that Act, section 43B; or
    - (iii) an application to review a decision has been made and the tribunal has confirmed the decision.
- (5) In this section:
- dealing* with a request includes reviewing, under section 59, a decision refusing the request.

**11 Charge may be remitted**  
**Section 29 (3) (b)**

*omit*

the personal affairs of the applicant

*substitute*

personal information about the applicant

**12**      **Remission of application fees**  
**Section 30 (1) (b) (ii)**

*omit*

the personal affairs of the applicant or to

*substitute*

personal information about the applicant or

**13**      **New section 37A**

*insert*

**37A**      **Documents affecting national security, defence or international relations**

- (1) A document is an exempt document if its disclosure under this Act—
- (a) would, or could reasonably be expected to, cause damage to—
    - (i) the security of the Commonwealth, the Territory or any State; or
    - (ii) the defence of the Commonwealth, the Territory or any State; or
    - (iii) the international relations of the Commonwealth; or
  - (b) would divulge any information or matter communicated in confidence by or for a foreign government, an authority of a foreign government or an international organization to the government of the Commonwealth or Territory, to an authority of the Commonwealth or Territory or to a person receiving the communication of the Commonwealth or Territory or of an authority of the Territory.

- (2) If a Minister is satisfied that a document is an exempt document under subsection (1), the Minister may sign a certificate to that effect stating the reason and, subject to part 7, the certificate, while in force, establishes conclusively that the document is an exempt document.
- (3) If a Minister is satisfied as mentioned in subsection (2) only because of matter contained in a particular part of a document, a certificate under that subsection in relation to the document must identify that part of the document that contains the matter.
- (4) If a Minister is satisfied that information about the existence or non-existence of a document described in a request would, if contained in a document of an agency, cause the document to be an exempt document under subsection (1), the Minister may sign a certificate to that effect, stating that reason.

*Note 1* A Minister may delegate the Minister's functions under an Act or statutory instrument to anyone else (see Legislation Act, s 254A).

*Note 2* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

- (5) In this section:

***security of the Commonwealth, the Territory or any State*** includes—

- (a) matters relating to the detection, prevention or suppression of activities, whether within or outside Australia, subversive of, or hostile to the interests of the Commonwealth, the Territory or any State or of any country allied or associated with the Commonwealth; and

- (b) the security of any communications system or cryptographic system of the Commonwealth, the Territory, any State or of another country used for—
  - (i) the defence of the Commonwealth, the Territory or any State or of any country allied or associated with the Commonwealth; or
  - (ii) the conduct of the international relations of the Commonwealth.

**14 Documents affecting personal privacy  
Section 41 (1)**

*omit*

information relating to the personal affairs of

*substitute*

personal information about

**15 Persons may make application for amendment of records  
Section 48**

*omit*

information relating to the person's personal affairs

*substitute*

personal information about the person

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**16 Powers of tribunal  
Section 62 (6)**

*substitute*

- (6) If application is made to the tribunal for review of a decision refusing to grant access to a document in relation to which a certificate is in force under section 34 (4) or section 37A (4), the tribunal must, if the applicant requests, determine whether reasonable grounds exist for the claim that information about the existence or non-existence of the document would cause the document to be an exempt document under section 34 (1) or section 37A (1).

**17 New section 69A**

*insert*

**69A Review of certain decisions about documents relating to personal information**

- (1) Subsection (2) applies if—
- (a) a request has been made for access to a document containing personal information about a person (including a deceased person); and
  - (b) an agency or Minister decides that the document to which the request relates is not an exempt document under section 41 (Documents affecting personal privacy).
- (2) A person or, if the person is deceased, the legal representative of the person, may apply to the tribunal for a review of the decision.
- (3) If an application is made under subsection (2)—
- (a) the provisions of this part (other than section 60 and section 71) apply in the same way as they apply to an application for review of a decision refusing to grant access to a document; and

- (b) the person dealing with the application must inform the person who made the request of the application.
- (4) Subsection (5) applies if—
- (a) a request is made for access to a document containing personal information about a person (including a deceased person); and
- (b) an agency or Minister decides not to grant access to the document; and
- (c) an application is made to the tribunal for a review of the decision.
- (5) The person dealing with the application must inform the person mentioned in subsection (4) (c) or, if the person has died, the legal representative of the person, of the application.

## **18 Further amendments, mentions of *section 34* etc**

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 <i>omit</i></b>	<b>column 4 <i>substitute</i></b>
1	section 24 (1) and (2)	section 34 or 37 (1)	section 34, section 37 (1) or section 37A
2	section 58 (a)	section 34 (4) or 35 (5)	section 34 (4), section 35 (5) or section 37A (4)
3	section 58 (b)	section 34 or 35	section 34, section 35 or section 37A
4	section 62 (3)	section 34, 35 or 36	section 34, section 35, section 36 or section 37A
5	section 62 (4)	section 34 or 35	section 34, section 35 or section 37A
6	section 63 (2) (a)	section 34 (2) or 35 (3) or (5)	section 34 (2), section 35 (3), section 35 (5) or section 37A (2)

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 omit</b>	<b>column 4 substitute</b>
7	section 63 (2) (b)	section 34 (4)	section 34 (4) or section 37A (4)
8	section 63 (5)	section 34, 35 or 36	section 34, section 35, section 36 or section 37A
9	section 63 (6)	section 34 or 35	section 34, section 35 or section 37A
10	section 63 (8)	section 34, 35 or 36	section 34, section 35, section 36 or section 37A
11	section 63 (9) (a)	section 34 or 36	section 34, section 36 or section 37A
12	section 65 (2) (a) (iv)	section 34 (2) or 35	section 34 (2), section 35 or section 37A (2)
13	section 65 (2) (a) (vi)	section 34 (4)	section 34 (4) or section 37A (4)
14	section 65 (2) (a) (vi)	section 34	section 34 or section 37A
15	sections 67 (1) and 74 (5) (a)	section 34, 35 or 36	section 34, section 35, section 36 or section 37A
16	section 74 (5) (b)	section 34 (4)	section 34 (4) or section 37A (4)
17	section 74 (6)	section 35 (4) or 36 (4)	section 35 (4), section 36 (4) or section 37A (3)
18	section 75	section 34, 35 or 36	section 34, section 35, section 36 or section 37A

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 23 November 2006.

**2 Notification**

Notified under the Legislation Act on 23 March 2007.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Freedom of Information Amendment Bill 2007, which originated in the Legislative Assembly as the Freedom of Information Amendment Bill 2006 and was passed by the Assembly on 13 March 2007.

Clerk of the Legislative Assembly

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