

2006

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Freedom of Information Amendment Bill 2006

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(Attorney-General)

# Freedom of Information Amendment Bill 2006

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## A Bill for

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 **1 Name of Act**

2 This Act is the *Freedom of Information Amendment Act 2006*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

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

7 **3 Legislation amended**

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

9 **4 Interpretation for Act**  
10 **Section 4 (1), new definition of *personal information***

11 *insert*

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

17 **5 Pt 3 not to apply to certain documents**  
18 **Section 11 (2) (a)**

19 *omit*

20 information relating to the personal affairs of that person

21 *substitute*

22 personal information about the person

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1 **6 Time within which requests to be decided**  
2 **Section 18 (4)**

3 *substitute*

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

8 **7 Requests may be refused in certain cases**  
9 **Section 23 (1)**

10 *substitute*

- 11 (1) An agency or Minister may refuse to grant access to documents in  
12 accordance with a request without processing the request if—
- 13 (a) the request is expressed to relate to all documents, or to all  
14 documents of a stated class, that contain information of a stated  
15 kind or relate to a stated subject matter; and
- 16 (b) the agency or Minister is satisfied that the work involved in  
17 giving access to all documents to which the request relates  
18 would substantially and unreasonably—
- 19 (i) divert the resources of the agency from its other  
20 operations; or
- 21 (ii) interfere with the performance by the Minister of his or  
22 her functions.
- 23 (1A) In deciding, for subsection (1), whether to refuse to grant a request,  
24 the agency or Minister—
- 25 (a) must have regard to the number and volume of the documents  
26 and the resources that would have to be used in—
- 27 (i) identifying, locating and collating the documents  
28 (including documents held in the Minister's office or by  
29 contractors outside the agency); and

- 1 (ii) examining the documents and consulting on the  
2 documents with any entity in relation to the request; and  
3 (iii) copying the documents; and  
4 (iv) preparing an itemised schedule of the documents; and  
5 (v) notifying the applicant of any interim or final decision on  
6 the request; but  
7 (b) must not have regard to—  
8 (i) any fee or charge payable for processing the request; or  
9 (ii) any reason that the person requesting access gives for  
10 requesting access; or  
11 (iii) the agency's or Minister's belief as to the person's  
12 reasons for requesting access.  
13 (1B) Subsection (1A) (a) does not limit the matters the Minister may have  
14 regard to.

15 **8 Procedure on request in respect of documents likely to**  
16 **affect relations between the Territory and the**  
17 **Commonwealth or a State**  
18 **New section 26 (2) (b) (ia)**

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

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1 **9 Procedure on request in respect of document relating to**  
2 **business affairs etc**  
3 **New section 27 (2) (b) (ia)**

4 *insert*

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

9 **10 New section 27A**

10 *insert*

11 **27A Procedure on request in relation to document containing**  
12 **personal information**

- 13 (1) This section applies if—
- 14 (a) a request is received by an agency or Minister in relation to a  
15 document containing personal information about a person  
16 (including a person who has died); and
- 17 (b) it appears to the person dealing with the request that the person  
18 mentioned in paragraph (a), or if that person has died, the  
19 person's legal representative, might reasonably wish to submit  
20 that the document is an exempt document under section 41  
21 (Documents affecting personal privacy) so far as it contains  
22 personal information.
- 23 (2) A decision to grant access under this Act to the document, so far as  
24 it contains the personal information, must not be made unless, if it is  
25 reasonably practicable to do so having regard to all the  
26 circumstances (including the application of section 18)—

- 1 (a) the person dealing with the request has given the person or the  
2 legal representative of the person, a reasonable opportunity to  
3 make a submission that the document, so far as it contains the  
4 personal information, is an exempt document under section 41;  
5 and
- 6 (b) the person making the decision has considered any submission  
7 made in relation to the request.
- 8 (3) In deciding, for subsection (1), whether a person might reasonably  
9 wish to submit that a document, so far as it contains personal  
10 information, is an exempt document under section 41, the person  
11 dealing with the request, must have regard to the following:
- 12 (a) the extent to which the personal information is well known;
- 13 (b) whether the person to whom the personal information relates is  
14 known to be associated with the matters dealt with in the  
15 document;
- 16 (c) the availability of the personal information from publicly  
17 accessible sources;
- 18 (d) anything else the person dealing with the request considers  
19 relevant.
- 20 (4) If, after any submissions have been made in accordance with  
21 subsection (2), a decision is made that the document, so far as it  
22 contains the personal information, is not an exempt document under  
23 section 41—
- 24 (a) the person dealing with the request must notify the following  
25 people, in writing, of the decision:
- 26 (i) the person who made the request;
- 27 (ii) a person who made a submission in relation to the  
28 request; and



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

17 **11 Charge may be remitted**  
18 **Section 29 (3) (b)**

- 19 *omit*
- 20 the personal affairs of the applicant
- 21 *substitute*
- 22 personal information about the applicant

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

3 *omit*

4 the personal affairs of the applicant or to

5 *substitute*

6 personal information about the applicant or

7 **13 New section 37A**

8 *insert*

9 **37A Documents affecting national security, defence or**  
10 **international relations**

11 (1) A document is an exempt document if its disclosure under this  
12 Act—

13 (a) would, or could reasonably be expected to, cause damage to—

14 (i) the security of the Commonwealth, the Territory or any  
15 State; or

16 (ii) the defence of the Commonwealth, the Territory or any  
17 State; or

18 (iii) the international relations of the Commonwealth; or

19 (b) would divulge any information or matter communicated in  
20 confidence by or for a foreign government, an authority of a  
21 foreign government or an international organization to the  
22 government of the Commonwealth or Territory, to an authority  
23 of the Commonwealth or Territory or to a person receiving the  
24 communication of the Commonwealth or Territory or of an  
25 authority of the Territory.

- 1 (2) If a Minister is satisfied that a document is an exempt document  
2 under subsection (1), the Minister may sign a certificate to that  
3 effect stating the reason and, subject to part 7, the certificate, while  
4 in force, establishes conclusively that the document is an exempt  
5 document.
- 6 (3) If a Minister is satisfied as mentioned in subsection (2) only because  
7 of matter contained in a particular part of a document, a certificate  
8 under that subsection in relation to the document may identify that  
9 part of the document that contains the matter.
- 10 (4) If a Minister is satisfied that information about the existence or  
11 non-existence of a document described in a request would, if  
12 contained in a document of an agency, cause the document to be an  
13 exempt document under subsection (1), the Minister may sign a  
14 certificate to that effect, stating that reason.
- 15 *Note 1* A Minister may delegate the Minister's functions under an Act or  
16 statutory instrument to anyone else (see Legislation Act, s 254A).
- 17 *Note 2* For the making of delegations and the exercise of delegated functions,  
18 see the Legislation Act, pt 19.4.
- 19 (5) In this section:
- 20 ***security of the Commonwealth, the Territory or any State***  
21 ***includes—***
- 22 (a) matters relating to the detection, prevention or suppression of  
23 activities, whether within or outside Australia, subversive of,  
24 or hostile to the interests of the Commonwealth, the Territory  
25 or any State or of any country allied or associated with the  
26 Commonwealth; and

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

9 **14 Documents affecting personal privacy**  
10 **Section 41 (1)**

11 *omit*  
12 information relating to the personal affairs of  
13 *substitute*  
14 personal information about

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

17 *omit*  
18 information relating to the person's personal affairs  
19 *substitute*  
20 personal information about the person

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**16** **New section 69A***insert***69A** **Review of certain decisions about documents relating to personal affairs**

- (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.

- 1           (5) The person dealing with the application must inform the person  
2           mentioned in subsection (4) (c) or, if the person has died, the legal  
3           representative of the person, of the application.
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## Endnotes

**1       Presentation speech**

Presentation speech made in the Legislative Assembly on       2006.

**2       Notification**

Notified under the Legislation Act on                               2006.

**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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