

2019

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Freedom of Information Amendment Bill 2019

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(Attorney-General)

Freedom of Information Amendment Bill 2019

A Bill for

An Act to amend the *Freedom of Information Act 2016*

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 2019*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written notice.

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

7 *Note 2* A single day or time may be fixed, or different days or times may be
8 fixed, for the commencement of different provisions (see [Legislation Act](#),
9 s 77 (1)).

10 *Note 3* If a provision has not commenced within 6 months beginning on the
11 notification day, it automatically commences on the first day after that
12 period (see [Legislation Act](#), s 79).

13 **3 Legislation amended**

14 This Act amends the *Freedom of Information Act 2016*.

15 **4 What is *open access information*?**
16 **Section 23 (1), definition of *open access information*, of**
17 **an agency, paragraph (d)**

18 *substitute*

19 (d) budget papers and Appropriation Acts presented to the
20 Legislative Assembly under the *Financial Management*
21 *Act 1996*;

5 Section 23 (1), definition of *open access information*, of a Minister, paragraph (b)

substitute

(b) for the Chief Minister—

(i) includes the following information about each Cabinet or Cabinet committee decision made after the commencement of this Act:

(A) a summary of the decision;

(B) the decision reference number;

(C) the date when the decision was made;

(D) the triple bottom line assessment for the decision; but

(ii) does not include information about a decision of Cabinet or a Cabinet committee in relation to a proposed budget for the Territory if the proposed budget has not been presented to the Legislative Assembly under the *Financial Management Act 1996*, section 10 (Budget papers).

**6 Requirement for disclosure log
Section 28 (6)**

substitute

(6) A disclosure log must not include—

(a) an access application for personal information; or

(b) information about an applicant's business, commercial, financial or professional affairs, the publication of which would be unreasonable in the circumstances.

Example

information about unsubstantiated food safety allegations made against the applicant's business, the publication of which could unduly damage the reputation of the applicant's business

1 **7 Section 31 heading**

2 *substitute*

3 **31 Application not in accordance with requirements**

4 **8 New section 31 (4)**

5 *insert*

- 6 (4) The agency or Minister need not deal further with the application if,
7 despite the agency or Minister taking reasonable steps and giving the
8 person reasonable time (but not less than 3 months) under
9 subsection (2), the application is still not made in accordance with the
10 requirements under section 30.

11 **9 Deciding access—identifying information within scope of**
12 **application**
13 **Section 34 (3)**

14 *after*

15 application

16 *insert*

17 (a *clarification request*)

18 **10 New section 34 (4) to (7)**

19 *insert*

- 20 (4) The respondent may suspend an access application if—
- 21 (a) the respondent has taken all reasonable steps to contact the
22 applicant about a clarification request; and
- 23 (b) either—
- 24 (i) the respondent is unable to contact the applicant; or
- 25 (ii) the applicant does not respond to the clarification request.

- 1 (5) If the access application is suspended, the respondent must, in
2 writing, tell the applicant—
- 3 (a) that the application has been suspended; and
4 (b) about the effect of subsection (6).
- 5 (6) The respondent—
- 6 (a) must decide the application if the applicant responds to the
7 clarification request within 3 months after the request was made;
8 but
- 9 (b) need not deal further with the application if it is suspended under
10 subsection (4) for 3 months or longer.
- 11 (7) Subsection (6) (b) does not prevent the applicant from making
12 another access application for the same information.

13 **11 Deciding access—decision not made in time taken to be**
14 **refusal to give access**
15 **New section 39 (1A)**

16 *insert*

- 17 (1A) Also, the respondent must give written notice to the ombudsman that
18 a decision relating to an access application was not made within the
19 time allowed if—
- 20 (a) under section 78, the ombudsman extends the time for the
21 respondent to decide the access application (the *extended time*);
22 and
- 23 (b) the respondent does not decide the access application within the
24 extended time.

1 **12 Section 39 (3)**

2 *substitute*

3 (3) If notice is given to the ombudsman under subsection (1) (c), the
4 relevant Minister must ensure that a copy of the notice is presented to
5 the Legislative Assembly within 3 sitting days after the access
6 application (including any review or appeal) is finally decided.

7 (3A) Subsection (3) does not apply if the ombudsman extended the time
8 for the respondent to decide the access application under section 78.

9 **13 Deciding access—time to decide**
10 **Section 40 (2)**

11 *substitute*

12 (2) The period under subsection (1) is extended by—

13 (a) if the respondent consults with a relevant third party under
14 section 38—15 working days; or

15 (b) if the respondent makes a clarification request under
16 section 34 (3)—the number of working days the applicant takes
17 to respond to the clarification request; or

18 (c) if the respondent contacts the applicant under section 106 (2)—
19 the number of working days the applicant takes to confirm or
20 vary the application; or

21 (d) if the applicant makes an application to the agency or Minister
22 to waive a fee under section 107—the number of working days
23 the agency or Minister takes to decide the waiver application.

24 **Example—par (b)**

25 The respondent receives an access application on 1 February. The respondent
26 contacts the applicant to clarify an aspect of the application and the applicant gives
27 the respondent an answer 10 working days later. The respondent must decide the
28 application not later than 30 working days after 1 February, being the 20 working
29 days allowed under section 40 (1) plus the 10 working days the applicant took to
30 answer the clarification request.

1 **14 Deciding access—respondent may ask for additional time**
2 **to decide**
3 **Section 41 (3) (b)**

4 *substitute*

- 5 (b) the applicant has not, within 7 working days after receiving the
6 respondent's request, refused the request; and

7 **15 New section 41 (4)**

8 *insert*

- 9 (4) The respondent must not ask the applicant for additional time under
10 this section if the effect of the applicant agreeing to the additional
11 time would be to give the respondent more than 12 months from the
12 day of receiving the access application to decide the application.

13 **Example**

14 The respondent receives an access application on 1 March 2019. Under section 40,
15 the respondent must make a decision on the application by no later than
16 1 April 2019 (20 working days after 1 March 2019). Before 1 April 2019, the
17 respondent asks the applicant for an additional 9 months to decide the application.
18 The applicant agrees and the respondent is then required to decide the application
19 by 1 January 2020. Before 1 January 2020, the respondent asks the applicant for a
20 further extension. The maximum extension that the respondent may ask for under
21 subsection (4) is 2 months.

22 **16 Section 42**

23 *substitute*

24 **42 Deciding access—extension of time given by**
25 **ombudsman**

- 26 (1) A respondent to an access application may apply to the ombudsman
27 for an extension of time to decide the application if—
28 (a) the respondent has asked the applicant for an additional stated
29 amount of time under section 41 and the applicant has refused
30 the request; or

- 1 (b) section 41 (4) prevents the respondent from asking the applicant
2 for an additional amount of time to decide the application.
- 3 (2) The application to the ombudsman must be made—
- 4 (a) before the end of the period for deciding the application under
5 section 40; or
- 6 (b) if the time to decide the application has already been extended
7 under section 41 or this section—before the end of the additional
8 time last granted.
- 9 (3) The ombudsman may, on application under subsection (1), extend the
10 time to decide an access application if the ombudsman believes it is
11 not reasonably possible for the respondent to deal with the application
12 within the period for deciding the application under section 40 or the
13 period as extended under section 41 or this section because—
- 14 (a) the application involves dealing with a large volume of
15 information; or
- 16 (b) the application is complex; or
- 17 (c) there are other exceptional circumstances.
- 18 **Example—complex application**
19 multiple, conflicting public interest factors apply to the information covered by the
20 application and extensive third party consultation is required
- 21 (4) The ombudsman may extend the time to decide the access application
22 for the period the ombudsman considers reasonable in the
23 circumstances, having regard to—
- 24 (a) the objects of this Act; and
- 25 (b) the importance of encouraging timely resolution of access
26 applications.

1 (5) The ombudsman may extend the time to decide the access application
2 subject to conditions.

3 **Examples—conditions**

4 1 the respondent provides the ombudsman with regular updates on progress with
5 the application

6 2 the respondent agrees to a timetable to progress the application

7 3 the respondent provides information progressively

8 (6) The ombudsman may cancel or amend an extension under
9 subsection (4) if—

10 (a) the ombudsman considers it appropriate, having regard to the
11 matters mentioned in subsection (4); or

12 (b) the respondent has not complied with a condition under
13 subsection (5).

14 (7) The ombudsman must tell the respondent and the applicant about any
15 extension, or cancellation or amendment of an extension, under this
16 section.

17 **17 Refusing to deal with application—information already**
18 **available to applicant**
19 **New section 45 (ea)**

20 *insert*

21 (ea) has otherwise previously been given to the applicant; or

1 **18 Section 49**

2 *substitute*

3 **49 Giving access—deferral of access**

4 (1) The respondent to an access application may defer giving access to
5 government information for a reasonable period (not longer than
6 3 months) if—

7 (a) the information was prepared with the intention that it be
8 formally published within a stated time; and

9 (b) the information has not been published as intended.

10 **Examples—formal publication**

11 1 formal release of a report at an event

12 2 media release

13 3 presentation to the Legislative Assembly

14 (2) Also, the respondent to an access application may defer giving access
15 to government information if the applicant has not paid the fee
16 payable in relation to the application.

17 **19 Access applications if two or more agencies or Ministers
18 hold relevant information
19 Section 58 (1)**

20 *omit*

21 and relevant information and may

22 *substitute*

23 and relevant information may

1 **20 Section 58 (2) (c) (ii) and (4)**

2 *after*

3 decide the application

4 *insert*

5 , or part of the application,

6 **21 Applications for ombudsman review**
7 **New section 74 (1) (a) (ia)**

8 *insert*

9 (ia) for a decision in relation to an access application for
10 personal information—the day the respondent gave the
11 applicant a decision notice in relation to the application
12 under section 51; or

13 **22 Ombudsman review—extension of time when decision**
14 **not made in time**
15 **Section 78 (4)**

16 *substitute*

17 (4) An extension of time given by the ombudsman may be for the period
18 the ombudsman considers reasonable in the circumstances, having
19 regard to—

20 (a) the objects of this Act; and

21 (b) the importance of encouraging timely resolution of access
22 applications.

1 **23 New section 80A**

2 *insert*

3 **80A Informal resolution**

4 (1) This section applies if the ombudsman considers that a matter to
5 which an application for ombudsman review relates may be resolved
6 by an informal process.

7 (2) The ombudsman may—

8 (a) assist the respondent and applicant to resolve the matter
9 informally; and

10 (b) suspend the application of section 82 for up to 30 working days
11 for the purpose of paragraph (a).

12 **24 Mediation for applications**
13 **New section 81 (2) (c)**

14 *insert*

15 (c) suspend the application of section 82 for up to 30 working days
16 for the purpose of paragraphs (a) and (b).

17 **25 Ombudsman review**
18 **Section 82 (1)**

19 *substitute*

20 (1) This section applies to an application for ombudsman review.

21 (1A) Unless resolved informally under section 80A or by mediation under
22 section 81, the ombudsman must review the decision and—

23 (a) confirm the decision; or

24 (b) vary the decision; or

25 (c) set aside the decision and make a substitute decision.

1 (1B) The ombudsman must make a decision under subsection (1A) within
2 30 working days after—

3 (a) if the ombudsman has, under section 80A (2) or section 81 (2),
4 suspended the application of this section—the end of the period
5 for which the application of this section is suspended; or

6 (b) in any other case—the day the application for ombudsman
7 review was made.

8 **Example—par (a)**

9 The ombudsman receives an application for ombudsman review and makes
10 attempts over a period of 20 working days to assist the parties to resolve the matter
11 by an informal process under section 80A, but without success. The ombudsman
12 must make a decision within 30 working days after the end of the 20 working days
13 devoted to the attempts under section 80A.

14 **26 New section 82 (3) (c) to (e)**

15 *insert*

16 (c) the respondent makes a decision on the access application or
17 otherwise resolves the application; or

18 (d) the ombudsman is satisfied that the review application is
19 frivolous or vexatious or involves an abuse of process; or

20 (e) the ombudsman has been unable to contact the applicant for
21 review despite making reasonable efforts.

22 *Note* If, under par (a) or (e), the ombudsman has decided not to review a
23 decision and the applicant wishes to make a new application for
24 ombudsman review, the longer period necessary for making the new
25 application may be allowed by the ombudsman under s 74 (1).

1 **27** **Review of decisions by ACAT**
2 **Section 84 (1)**

3 *omit*

4 section 82 (1)

5 *substitute*

6 section 82 (1A)

7 **28** **Section 106**

8 *substitute*

9 **106** **Fee estimate**

- 10 (1) The respondent to an access application may give the applicant a
11 written estimate of the fee (if any) likely to be payable for information
12 provided in response to the application (the *fee estimate*).
- 13 (2) If the fee estimate is that a fee is payable, the respondent must ask the
14 applicant to confirm or vary the access application.
- 15 (3) The respondent may suspend an access application if—
- 16 (a) the respondent has taken all reasonable steps to contact the
17 applicant about the fee estimate; and
- 18 (b) either—
- 19 (i) the respondent is unable to contact the applicant; or
- 20 (ii) the applicant does not confirm or vary the application.
- 21 (4) If the access application is suspended, the respondent must, in
22 writing, tell the applicant—
- 23 (a) that the application has been suspended; and
- 24 (b) about the effect of subsection (5).

- 1 (5) The respondent—
2 (a) must decide the application if the applicant confirms or varies
3 the application within 3 months after the request was made; but
4 (b) need not deal further with the application if it is suspended under
5 subsection (3) for 3 months or longer.
6 (6) Subsection (5) (b) does not prevent the applicant from making
7 another access application for the same information.

8 **29 Dictionary, note 2**

9 *insert*

- 10 • working day

11 **30 Dictionary, new definition of *clarification request***

12 *insert*

13 *clarification request*—see section 34 (3).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 1 August 2019.

2 Notification

Notified under the [Legislation Act](#) on 2019.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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