

2022

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Special Minister of State)

Freedom of Information Amendment Bill 2022

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Section 16	2
5 Public interest test New section 17 (3)	3
6 Open access information—deletion of contrary to the public interest information New section 26 (3) and (4)	3

Contents

	Page	
7	Requirement for disclosure log Section 28 (1)	3
8	Deciding access—identifying information within scope of application Section 34 (6)	4
9	Deciding access—relevant third parties Section 38 (5) (b)	4
10	Deciding access—decision not made in time taken to be refusal to give access Section 39 (4)	4
11	Section 39 (5)	4
12	Deciding access—time to decide Section 40 (1)	5
13	New section 40 (2) (ba)	5
14	Section 40 (2), example	5
15	Deciding access—respondent may ask for additional time to decide Section 41 (3) and (4) and example	6
16	Deciding access—extension of time given by ombudsman Section 42 (1) (a) and (b)	7
17	Section 42 (3), new example	7
18	Refusing to deal with application—general Section 43 (1) (b), new example	8
19	Refusing to deal with application—information already available to applicant Section 45 (a)	8
20	Giving access—form of access Section 47 (5)	8
21	Applications for ombudsman review New section 74 (1) (a) (iia)	8
22	Ombudsman review New section 82 (3) (aa)	9
23	New section 82 (8)	9
24	Information disclosure of which is taken to be contrary to the public interest Schedule 1	9
25	New schedule 1, section 1.15	9

Contents

		Page
26	Reviewable decisions Schedule 3, new item 1A	10
27	Schedule 3, item 2	10
28	Dictionary, new definition of <i>policy document</i>	10

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(As presented)

(Special Minister of State)

Freedom of Information Amendment Bill 2022

A Bill for

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

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

J2022-452

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Freedom of Information Amendment Act 2022*.

3 **2 Commencement**

4 This Act commences on the 7th 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 2016*.

9 **4 Section 16**

10 *substitute*

11 **16 Meaning of *contrary to the public interest information***

12 (1) For this Act, information is *contrary to the public interest*
13 *information* if—

14 (a) it is taken to be contrary to the public interest to disclose under
15 schedule 1; or

16 (b) disclosing the information would, on balance, be contrary to the
17 public interest under the test set out in section 17.

18 (2) However, information mentioned in schedule 1 (other than
19 information subject to legal professional privilege under section 1.2)
20 is not taken to be contrary to the public interest information if it
21 identifies—

22 (a) corruption; or

23 (b) the commission of an offence by a public official; or

24 (c) that the scope of a law enforcement investigation has exceeded
25 the limits imposed by law.

1 **5 Public interest test**
2 **New section 17 (3)**

3 *insert*

- 4 (3) Despite subsection (2) (f), the applicant's identity, circumstances, and
5 reason for seeking access to the information may be taken into
6 account if—
7 (a) the information requested is personal information; and
8 (b) the personal information is not about the applicant.

9 **6 Open access information—deletion of contrary to the**
10 **public interest information**
11 **New section 26 (3) and (4)**

12 *insert*

- 13 (3) However, subsection (2) does not apply to the agency if—
14 (a) the record is a policy document of the agency; and
15 (b) the information, other than the contrary to the public interest
16 information, contained in the record has been otherwise made
17 publicly available.
18 (4) In this section:
19 *policy document*—see section 23 (2).

20 **7 Requirement for disclosure log**
21 **Section 28 (1)**

22 *substitute*

- 23 (1) An agency and Minister must keep a record of access applications
24 dealt with by the agency or Minister (a *disclosure log*).

1 **8 Deciding access—identifying information within scope of**
2 **application**
3 **Section 34 (6)**

4 *omit*

5 3 months

6 *substitute*

7 6 weeks

8 **9 Deciding access—relevant third parties**
9 **Section 38 (5) (b)**

10 *omit*

11 15 working days

12 *substitute*

13 10 working days

14 **10 Deciding access—decision not made in time taken to be**
15 **refusal to give access**
16 **Section 39 (4)**

17 *omit*

18 3 sitting days

19 *substitute*

20 6 sitting days

21 **11 Section 39 (5)**

22 *substitute*

23 (5) Subsection (4) does not apply if—

24 (a) the ombudsman extended the time for the respondent to decide
25 the access application under section 78; or

(b) the access application is only for personal information.

**12 Deciding access—time to decide
Section 40 (1)**

substitute

(1) A respondent to an access application must decide the application not later than 30 working days after the day of receiving the application.

13 New section 40 (2) (ba)

insert

(ba) if the respondent gives notice to the applicant under section 46 (1) (a)—the consultation period under section 46 (4) for the application; or

14 Section 40 (2), example

substitute

(e) if the period includes 1 or more Christmas shutdown days—the number of Christmas shutdown days.

Example—par (b)

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

(3) In this section:

Christmas shutdown day means a working day that falls on 27, 28, 29, 30 or 31 December in a year.

1 **15 Deciding access—respondent may ask for additional time**
2 **to decide**
3 **Section 41 (3) and (4) and example**

4 *substitute*

5 (3) The respondent may decide the application before the end of the
6 additional time requested if—

7 (a) the total period for deciding the application would, if the request
8 is agreed to, be not more than 12 months; and

9 (b) the applicant agrees, or is taken to agree, to the request.

10 (4) For subsection (3) (b), an applicant is *taken to agree* to a request if—

11 (a) the applicant has not, within 7 working days after the request is
12 made, refused the request; and

13 (b) the respondent has not received notice that the applicant has
14 applied for review under part 8.

15 (5) The respondent may decide the application before the end of the
16 additional time requested if—

17 (a) the total period for deciding the application would, if the request
18 is agreed to, be more than 12 months but not more than
19 24 months; and

20 (b) both of the following apply:

21 (i) the applicant agrees to the request;

22 (ii) the respondent agrees to deal with the application
23 progressively.

24 **Example—par (ii)**

25 the respondent provides information progressively

26 (6) The respondent must not ask the applicant for additional time to
27 decide an access application if the total period for deciding the
28 application would, if the request is agreed to, be more than 24 months.

- 1 (7) In this section:
2 ***total period***, to decide an access application, means the period—
3 (a) beginning on the day the respondent receives the application;
4 and
5 (b) ending on the day the respondent decides the application.

6 **16 Deciding access—extension of time given by**
7 **ombudsman**
8 **Section 42 (1) (a) and (b)**

- 9 *substitute*
10 (a) the respondent has asked the applicant for an additional stated
11 amount of time under section 41 (1) and—
12 (i) the applicant has refused the request under section 41 (3);
13 or
14 (ii) the applicant has not agreed to the request under section 41
15 (5); or
16 (b) section 41 (6) prevents the respondent from asking the applicant
17 for an additional amount of time to decide the application.

18 **17 Section 42 (3), new example**

- 19 *after the example, insert*
20 **Example—exceptional circumstances**
21 at a point in time, the volume or complexity of applications significantly exceeds
22 the resources available to the respondent to deal with applications

1 **18 Refusing to deal with application—general**
2 **Section 43 (1) (b), new example**

3 *insert*

4 **Example—vexatious application**

5 an application made only to annoy or unreasonably interfere with the
6 respondent’s operations, or for an improper purpose

7 **19 Refusing to deal with application—information already**
8 **available to applicant**
9 **Section 45 (a)**

10 *substitute*

11 (a) is publicly available; or

12 **20 Giving access—form of access**
13 **Section 47 (5)**

14 *substitute*

15 (5) However, access may be given in a form (an *alternative form*) other
16 than that requested by the applicant if—

17 (a) it is not reasonably practicable for the respondent to give access
18 in the form requested; and

19 (b) the respondent is reasonably satisfied that the applicant can
20 receive the information given in the alternative form.

21 **21 Applications for ombudsman review**
22 **New section 74 (1) (a) (iiia)**

23 *insert*

24 (iiia) for a decision to make open access information
25 available—the day the information was published; or

1 **22 Ombudsman review**
2 **New section 82 (3) (aa)**

3 *insert*

4 (aa) if the ombudsman has given a written notice to a person, under
5 section 79 (1), in relation to the application—the time, or the end
6 of the period, stated in the notice under section 79 (2) (b); or

7 **23 New section 82 (8)**

8 *after the note, insert*

9 (8) The ombudsman may correct a mistake, error or omission in a
10 decision, or the reasons for a decision, made under this section.

11 **24 Information disclosure of which is taken to be contrary to**
12 **the public interest**
13 **Schedule 1**

14 *omit*

15 Information mentioned in this schedule is taken to be contrary to the
16 public interest to disclose unless the information identifies corruption
17 or the commission of an offence by a public official or that the scope
18 of a law enforcement investigation has exceeded the limits imposed
19 by law.

20 **25 New schedule 1, section 1.15**

21 *insert*

22 **1.15 Information in possession of Inspector of Correctional**
23 **Services**

24 Information in the possession of the inspector of correctional services
25 appointed under the *Inspector of Correctional Services Act 2017*,
26 section 9 that has been obtained or generated in relation to an
27 examination or review conducted under that [Act](#), section 18.

1 **26 Reviewable decisions**
2 **Schedule 3, new item 1A**

3 *before item 1, insert*

1A	24 (1)	make open access information publicly available	person whose interests are affected
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4 **27 Schedule 3, item 2**

5 *substitute*

2	35 (1) (a)	give access to government information	applicant, relevant third party
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6 **28 Dictionary, new definition of *policy document***

7 *insert*

8 *policy document*—see section 23.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 21 September 2022.

2 Notification

Notified under the [Legislation Act](#) on 2022.

3 Republications of amended laws

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