

How to Make a Freedom of Information (FOI) Request

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Who is this Infosheet for?

This Infosheet provides a general guide to making Freedom of Information (FOI) requests to obtain documents or information from the Department for Home Affairs. You can also request files and records from other Commonwealth, State and Territory departments and agencies.

IMPORTANT

- You have a general legal right to access documents or personal information that is being held by government departments or agencies, such as the Department of Home Affairs (DHA). To access these documents or information, you must make a Freedom of Information (FOI) request.
- **Your FOI request must be in writing and specify the documents or information you are requesting. A government department or organisation must give you the documents or information you request, unless they have a valid legal reason to refuse.**
- If you have made an FOI request and it has been refused, or the Department has taken more than 30 days to make a decision, you can apply to the Office of the Australian Information Commissioner (OAIC) for a review of the decision. Applying for a review is free and confidential. You must generally make an application for review within 60 days after receiving the DHA decision or if it is more than 30 days since your application and you have not received a decision. For more information, visit the OAIC website: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

What is a Freedom of Information (FOI) request?

Under the *Freedom of Information Act 1982* (Cth), any individual can lodge a Freedom of Information (FOI) request with an organisation, government department or Minister to obtain access to documents or information.

What type of documents or information can I request?

You can request access to any documents or information held by an organisation or government department. **The organisation or government department can only deny an FOI request where there is a legal reason to do so**, such as:

- The documents or information do not exist, no longer exist, or have been lost or destroyed;
- Giving you access would unreasonably interfere with the privacy of other individuals;

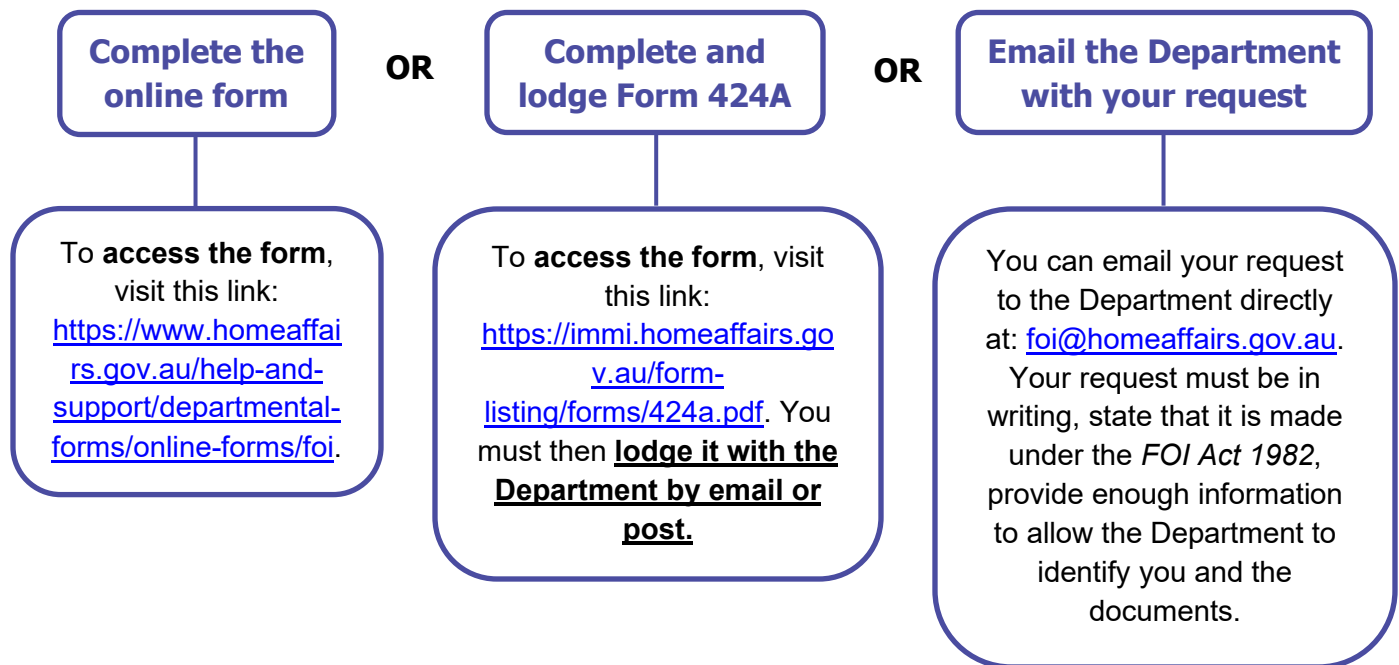
- Giving you access would unreasonably interfere with the operations of that or a related organisation or government department;
- Giving you access would be unlawful or is prohibited by other Australian laws or the decisions of an Australian court or tribunal;
- Giving you access would go against the public interest, such as if giving you access to that information would disclose details of a deliberative process undertaken by an organisation, government department, or Minister.

Why should I make an FOI request?

You have a general legal right to obtain documents or information being held by organisations or government departments. This includes access to documents held by the Department of Home Affairs (DHA), the government body responsible for managing immigration and the processing of asylum seekers, as well as those held by the Minister for Home Affairs. This means that **you can use an FOI request to obtain a copy of your file from the DHA, which can provide important information for you to use in your Protection Visa application or other proceedings or applications, such as applications for ministerial intervention.** You may also use an FOI request to access documents or information relating to your medical or criminal history.

How do I make an FOI request?

There are **three ways** to make an FOI request:



Below is a list of some important considerations when making an FOI request:

- If there are multiple ways of spelling your name, or you have changed your name in the past, you should include this information in your request.
- **If you are requesting a copy of your file relating to your Protection Visa application**, we suggest you request the following documents:

All documents, correspondence and audio recordings in relation to my [*insert name of Protection Visa applied for*] application, on the file CLF [*insert CLF number*].

- **If you are requesting a copy of your file relating to immigration detention**, we suggest you request the following documents:

A copy of my detention file, including all documents, correspondence and other documents.

- **If you are requesting documents or information about someone else (e.g. your spouse, child or dependents)**, you must obtain their consent and provide photo ID for that person. If you cannot provide their consent, you must be able to explain why.
- There is no cost for making an FOI request. However, **the Department may charge you for them to process and access the information you request, however they usually do not.** The amount that the Department could charge you is set out by the *FOI Guidelines*, which you can access here: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>. For more information on these charges and how to dispute a charge or invoice issued to you by the Department, visit the OAIC website: <https://www.oaic.gov.au/freedom-of-information/how-to-make-an-foi-request/what-charges-may-apply/>.
- Once you've submitted an FOI request to the Department, they are required to make a decision on your request within 30 days. If you are making an FOI request to access documents you need for an upcoming application or deadline, make sure to submit your request well in advance of that deadline in case of delays.

If my FOI request was refused, how can I have that decision reviewed?

If your FOI request was refused or you were only granted access to some of the documents you requested, you can have the decision reviewed. You can have the decision reviewed by:

- **Applying for an internal review:** if the Department refused your request, it is suggested that you first apply to the Department to internally review the decision under Part VI of the *FOI Act 1982*. Your request **must be in writing and made within 30 days after you received the decision from the Department**. The Department may decide to change or affirm its decision. The Department is required to undertake the internal review within 30 days after you submit your request. If you are not satisfied with the outcome of your internal review, see the below steps.

- For more information on requesting an internal review, visit the Department's website: <https://www.homeaffairs.gov.au/access-and-accountability/freedom-of-information/access-to-information/review-of-decisions>.
- **Applying to have the decision reviewed by the Information Commissioner:** the Office of the Information Commissioner (OAIC) may be able to review the Department's decision through an Information Commissioner (IC) review under Part VII of the *FOI Act 1982*. The IC review may decide that the Department is not exempt from giving you certain documents, or that a charge they issued you should be reduced or removed. **You must apply to the OAIC for review within 60 days of a decision to refuse you access to documents. There is no charge for applying for an IC review.**
- **What if my application is not decided by DHA within 30 days?** This is a very common situation. You can also apply to the IC where the Department has not made a decision on your request within 30 days. As above, **you must apply to the OAIC for review within 60 days of the expiry of the 30 days the DHA had to make a decision on your application. There is no charge for applying for an IC review.**
- If you are not satisfied with the outcome of the IC review, you may be able to apply to have it reviewed by the AAT.
 - For more information on requesting an IC review, visit the OAIC website: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.
- **Applying to have the decision reviewed by the Administrative Appeals Tribunal (AAT):** the AAT may be able to review the outcome of an IC review under Part VIIA of the *FOI Act 1982*. **You must apply to the AAT for review within 28 days after receiving the decision from the IC review. You will have to pay a lodgment fee to apply for review unless you are exempt.** See here for information about the AAT's fees. <https://www.aat.gov.au/apply-for-a-review/freedom-of-information-foi/fees> We recommend you seek independent legal advice if you are considering applying to the AAT.

Where to get further help

The ASRC may be able to provide you with free legal assistance. To contact us, please call our Triage Line on **0478 700 605** on Mondays and Thursdays between 10:30am – 12:30pm.

Disclaimer: This fact sheet provides general information to people seeking asylum in Australia through the onshore protection visa application process according to the law in July 2021. This fact sheet is not legal advice. You should not rely on this fact sheet to make decisions about your immigration matter. We strongly recommend that you get independent advice from a qualified legal practitioner or a registered migration agent. For information please visit: <https://www.mara.gov.au>.

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