



National Education and Care Services Freedom of Information Commissioner

NECS FOI Information Sheet 1

YOUR REVIEW RIGHTS

*If you disagree with a decision made by the Australian Children's Education and Care Quality Authority (ACECQA) or a State or Territory Education and Care Regulatory Authority (**the agencies**) under the Commonwealth Freedom of Information Act 1982 (**the FOI Act**), you can ask for the decision to be reviewed. You may want to request a review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the National Education and Care Services Freedom of Information Commissioner (NECS FOI Commissioner).*

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the National Education & Care Services FOI Commissioner

The NECS FOI Commissioner is an independent office holder who can review the decisions of the agencies under the FOI Act.

Do I have to go through the agency's internal review process first?

No. You may apply directly to the NECS FOI Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. The NECS FOI Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

online: www.necsopic.edu.au

post: PO Box 202 Carlton South VIC 3053

email: enquiry@necsopic.edu.au

in person (by appointment only): Level 3, 15-31 Pelham Street, Carlton VIC 3053

An application form is available on the website at www.necsopic.edu.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The NECS FOI Commissioner's office will help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the NECS FOI Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to documents to another person, you must apply within 30 days of being notified of that decision.

You can ask the NECS FOI Commissioner for an extension of time to apply, and this may be granted if the Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

The NECS FOI Commissioner will conduct the review.

Must the NECS FOI Commissioner review my matter?

No. The NECS FOI Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Very occasionally the NECS FOI Commissioner might decide that the relevant Tribunal would be better placed to review the matter, and if so, will advise you of the contact details for the relevant Tribunal and how to apply to it. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the NECS FOI Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The NECS FOI Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Commissioner may also ask the agency to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be undertaken based on submissions and papers provided by the parties. Sometimes the NECS FOI Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The NECS FOI Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the NECS FOI Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the NECS FOI Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The NECS FOI Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency has declined to release. Developments that have occurred since the original decision may also be considered.

What powers does the NECS FOI Commissioner have?

While the review process is designed to be informal, the NECS FOI Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency can also be ordered to undertake further searches for documents

What decisions can the Information Commissioner make?

After reviewing a decision, the NECS FOI Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The NECS FOI Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The NECS FOI Commissioner will publish decisions on the website. The name of the review applicant will not be published, unless that person requests otherwise or there is a special reason to publish it. Other parties to the review may also request anonymity.

What can I do if I disagree with the NECS FOI Commissioner's review decision?

You can appeal to the relevant Tribunal. The NECS FOI Commissioner will not be a party to those proceedings. There is a fee for lodging an application to a Tribunal, although there are some exemptions/waivers available. The NECS FOI Commissioner will advise you of your right to appeal to a Tribunal when advising you of the decision in your matter. The Commissioner will also provide you with details of the relevant Tribunal.

For Further Information

Phone: (03) 9654 1077

Email: enquiry@necsopic.edu.au

Write: PO Box 202 Carlton South 3053

Visit the

Website: www.necsopic.edu.au

Acknowledgement

To ensure consistent practice under the Commonwealth *Freedom of Information Act 1982* the information provided in this Information Sheet has been modified from material provided by the Commonwealth Office of the Australian Information Commissioner to reflect the specific jurisdiction and circumstances of the NECS FOI Commissioner.

The information is of a general nature. It is not a substitute for legal advice.