



National Education and Care Services Freedom of Information Commissioner

NECS FOI Information Sheet June 2021

YOUR FOI 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 request a review:*

- *if you sought access under the FOI Act to documents and were not given full access;*
- *if someone is to be granted access to information that is about you or your business;*
- *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your application to have your personal information held by the agency amended - because it was incorrect, incomplete or out of date - was not accepted.*

There are two ways you can seek a 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 a FOI decision that you disagree with, or refuses to amend or annotate your personal that is held by the agency, 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 extends the application time. You should contact the agency if you wish to seek an extension of time. 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. In such cases you should apply directly to the NECS FOI Commissioner for a review.

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 you may receive an outcome more quickly as agencies must decide within 30 days.

Do I have to pay?

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

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 is 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, and to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

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?

The NECS FOI Commissioner will publish FOI Review decisions on the office 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. Decisions made with respect to the amendment of personal records are not made public.

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.

Further Information

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Write: PO Box 177 Carlton South VIC 3053

Website: necsopic.edu.au

Acknowledgement

To ensure consistent practices under the Freedom of Information Act 1982 (Cth) the information provided in this Information Sheet has been adapted from material provided by the 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.

