



## 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your application to have your personal information held by the agency amended - because it was incorrect, incomplete or out of date - was not accepted.*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.

## How do I apply for a NECS FOI Commissioner Review?

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

**online:** [www.necsopic.edu.au](http://www.necsopic.edu.au)

**email:** [enquiry@necsopic.edu.au](mailto:enquiry@necsopic.edu.au)

**post:** PO Box 177 Carlton South VIC 3053

**in person (by appointment only):** Level 5, 440 Collins Street, Melbourne

An application form is available on the website at [www.necsopic.edu.au](http://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. Contact the office on [1300 081 533](tel:1300081533).

### When do I have to apply?

If you are objecting to a decision by an agency to refuse access to documents, impose a charge, or refuse to amend your personal details, 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 by an agency to grant access to another person to documents that contain your business or personal information, you must apply to the NECS FOI Commissioner **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 to do so.

### 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 an administrative Tribunal would be better placed to review your matter. If so, the Commissioner 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 their 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 for you.

### **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.

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

### **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**

**Phone:** 1300 081 533

**Email:** [enquiry@necsopic.edu.au](mailto:enquiry@necsopic.edu.au)

**Write:** PO Box 177, Carlton South 3053

**Website:** [www.necsopic.edu.au](http://www.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.*