National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

NECS FOI Commissioner Guideline 001/I

Your review rights under the Freedom of Information Act 1982

Introduction

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 **ECS 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;
- someone else is to be granted access to information that is about you or your business;
- an ECS agency has informed you that it will impose a charge for processing your request; or
- an ECS agency has refused your request to amend your personal information that the agency holds.

There are two ways you can seek a review of a decision: through **internal** review by the ECS agency and **external** review by the National Education and Care Services Freedom of Information Commissioner (NECS FOI Commissioner).

Internal review by the ECS agency

If an ECS agency makes a FOI decision that you disagree with, or refuses to amend or annotate your personal information 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.

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 ECS agencies under the FOI Act. After reviewing a decision made by an ECS agency the Commissioner must do one of three things:

- set the agency's decision aside and make a fresh decision; or
- affirm the agency's decision; or
- vary the agency's decision.

The Commissioner will give reasons for their decision.

Do I have to go through the ECS agency's internal review process before I ask the Commissioner to review the decision.?

No. You may apply directly to the NECS FOI Commissioner. However, going through the ECS 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 for a review?

No. Both an internal review by an ECS agency and the NECS FOI Commissioner's review are 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**: using the application form at necsopic.edu.au
- **email:** enquiry@necsopic.edu.au
- **post**: PO Box 177 Carlton South VIC 3053

Your application should include a copy of the ECS agency's decision that you are objecting to and your contact details. You should also set out the reasons why you are objecting to the decision.

Can I get help in completing my application?

Yes. The NECS FOI Commissioner's office will help you with your application. **Contact the office on 03 9910 9868.** If the phone is unattended leave a message with your contact number and the Commissioner will return your call.

How long do I have to apply for a Commissioner review?

If you are objecting to a decision by an ECS agency to refuse access to documents, impose a fee, 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 ECS 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 to do so.

Does the NECS FOI Commissioner have to 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.

On rare occasions the NECS FOI Commissioner might decide that an administrative Tribunal would be better placed to review your matter. If so, the Commissioner will discuss the reasons for this decision with you and advise you of the contact details for the relevant Tribunal and how to apply to it.

Can I withdraw my application?

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

Will there be other parties to the review?

There may be. The NECS FOI Commissioner can join other parties to the review who are affected by your 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.

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 involved in the matter to seek more information. The Commissioner may also ask the ECS agency to provide reasons for their original decision if the reasons given were inadequate.

Most Commissioner reviews are undertaken based on submissions and papers provided by the parties. Sometimes the Commissioner may decide to hold a formal 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.

Can someone else represent me?

Yes, including a lawyer if you wish. However, the NECS FOI Commissioner intends that the process is as informal and cost-effective as possible for you.

In reviewing a FOI decision, will the NECS FOI Commissioner look at all relevant documents, including those that an ECS agency claimed to be exempt from disclosure?

Yes. The NECS FOI Commissioner's review is a fresh decision, so all the relevant material is examined, including documents that the ECS 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?

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. The Commissioner can also require an ECS agency to undertake further searches for documents.

Will the Commissioner's review decision be made public?

The NECS FOI Commissioner publishes FOI Commissioner 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 in relation 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 contact details for the relevant Tribunal.

Document Currency

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