

**This guide is intended to assist Foster and Kinship Carers (Carers) understand the Freedom of Information application and review processes.**

The [Freedom of Information Act 1991 \(SA\)](#) (FOI Act) outlines the circumstances in which people can obtain documents held by government agencies. The purpose of the Act is to help keep government open and accountable in its dealings by ensuring information about its operation is available to members of the public.

As a Carer, if the Department for Child Protection (DCP) holds documents that you wish to access, you can apply to the DCP under the FOI Act and request them. This Carer Guide sets out when you might like to request information and how to do this.

An FOI Application requesting specific documents must be;

- made in writing on the Freedom of Information application form [Accessing information and FOI | Department for Child Protection](#)
- provide specific details of the document(s) you require
- include identification
- include the application fee or claim for fee waiver.

A \$39 fee applies to FOI applications. If you hold a current concession card or can show that paying this fee would cause you financial hardship, then the DCP must waive or reduce or refund the application fee. You will require some evidence to show this, for example, a photocopy of the relevant concession card, a Centrelink letter or bank statements. A photocopy of your identification (drivers licence/passport) must also be included in the application. The application can be lodged via mail or email at [DCP.FOI@sa.gov.au](mailto:DCP.FOI@sa.gov.au).

Please note: You cannot request documents from the Commissioner for Children and Young People or the Guardian for Children and Young People. This Carer Guide sets out the process for FOI applications to the DCP only.

#### **Step 1: Work out exactly what information you need**

Depending on what kind of document you need from the DCP, you might not need to apply through FOI. It is important to work out exactly what type of document you need: whether it is personal, non-personal or if it is to amend your details with DCP. If you are unsure which category concerns you, please contact the team at Connecting Foster & Kinship Carers SA (CF&KC-SA) for assistance.

#### **CARER INPUT:**

##### **Personal documents**

If the records you are looking for are *personal*, then you should apply using the DCP Freedom of Information application form, accessible at the following website:

<https://www.childprotection.sa.gov.au/department/freedom-information>

#### **Non personal documents**

If the records you are looking for are *non-personal*, then you should first check the DCP public disclosure log, in case anyone else has already requested this information.

All the non-personal information previously released is available at this log on the DCP website:

<https://www.childprotection.sa.gov.au/department/freedom-information/disclosure-logs>

#### **Amending documents**

If you are looking to amend documents, for example if they are incomplete, incorrect, misleading or out-of-date, then you need to complete the application to amend agency documents form, accessible at the following website:

<https://www.childprotection.sa.gov.au/department/freedom-information>

Examples of when you might need to amend your personal records include if the document contains information about your personal affairs and that information is in your opinion incomplete, incorrect, out-of-date or misleading.

#### **Step 2: FOI Process**

##### Receipt of Application

On receipt of your FOI application, the Department must acknowledge your application in writing.

The application will then be assessed to determine whether it is valid. The FOI Department may contact you for further supporting documents to ensure the application is valid. The supporting documents must be provided within 14 days of requesting. If not received the FOI application will be closed.

##### Determination

Once determined as a valid application, it must be dealt with by an accredited FOI officer, as soon as practicable (no later than 30 days) after it is received. This 30 day period can be extended to a further 20 days, if a large quantity of documents is requested however the DCP must provide you with notice in writing of this. Section 14(a) of the FOI Act.

##### Scope

On reviewing your FOI application, you may receive advice from DCP requesting an amendment to your application.

Where a FOI application is vague or unclear, the Department may contact you to seek clarification of the scope. Where necessary, you may be invited to amend the scope of the FOI application.

Where a large amount of documents have been deemed within scope, the Department may contact you to amend the application. Section 18(1) of the FOI Act provides that an agency may refuse to deal with a FOI application if it appears to the agency that the nature of the application is such that the work involved would, if carried out, substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

This does not mean that your application will be refused. Section 18(2) of the FOI Act requires that an application cannot be refused without the Department first endeavouring to assist the Applicant to amend the application so that the work involved would be no longer substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

DCP may ask that you identify a smaller scope of information for the request. This may involve specifying a particular document or smaller date range. Subsequent FOI applications can be made at the completion of the initial request if further information is required.

Documents created by another Agency will not be automatically provided in the application. The FOI Department will contact the relevant Agency and determine grounds for exemption as set out in Schedule 1 of the FOI Act.

After considering your application, the DCP will provide you with a determination in writing, called a "notice of determination".

- whether or not access to the document will be given;
- the fees payable for the application.

If the DCP has not determined an application within 30 days or after extending the application period, they are taken to have refused access. However, they can give access after the 30 day or extended period has lapsed: section 19(2a) FOI Act.

### **Step 3: How you can access the document**

The DCP can grant access to a document in a number of ways, including:

- providing you an opportunity to inspect the document;
- giving you a copy;
- making arrangements to view photos or videos;
- providing a written transcript of words recorded in the document or;
- reproducing a document.

If you request a document be provided to you in a particular way, the DCP must provide it in that format unless it would be excessively time-consuming for them or as otherwise set out in section 22 of the FOI Act.

Processing charges may be applicable, you will be contacted if charges are incurred.

#### **Step 4: If access is refused**

The DCP can refuse access to a document for a number of reasons, primarily if it is an 'exempt document', meaning that it not available for FOI requests.

Exempt documents include:

- Documents that affect the personal affairs of another person. This category includes information about individuals presently under the age of 18 years, the disclosure of which would be unreasonable considering the need to protect the person's welfare;
- Internal working documents of an agency (but NOT if it 'merely consists of matter that appears in an agency's policy document, or factual or statistical material);
- Documents relating to the judicial functions of a court or tribunal;
- Documents containing confidential material.

If the DCP can delete or redact the exempt material from the document, then they can't refuse to give access so long as you have indicated that you would want to be given access to such a copy.

The DCP can also *defer* access to a document in a number of specific circumstances, for example if it is required by law to be published and is about to be published or if it is about to be presented to Parliament.

#### **CARER INPUT:**

Make sure that on your application you include that you would accept a document with exempt information that has been deleted or redacted.

#### **Step 5: Internal Review**

If your application is refused, you have the right to a review of the decision under section 29 of the FOI Act.

An application to review the FOI determination, must be lodged, in writing to the Principal Officer of the FOI Department (DCP.FOI@sa.gov.au), within 30 days of receiving the determination letter to refuse the FOI application. Section 38(2).

In these circumstances, the decision to refuse access is reviewed by a DCP employee senior to the person who made the original decision. Section 29 provides that this person can confirm, vary or reverse the decision.

If a determination has not been made 14 days after the review application is received by the agency, it is taken to have confirmed the original decision.

Applying for an internal review may entail a fee.

#### **CARER INPUT:**

Make sure that you are aware of time considerations for an internal review. You must undertake an internal review with the DCP before going to external review.

## **Step 6: External Review**

Following an internal review, you have options to seek a review of the decision with the Ombudsman or the South Australian Civil and Administrative Appeals Tribunal (SACAT).

### **Ombudsman review**

Division 1, section 39 of the FOI Act allows for a party to seek a review of the decision from the Ombudsman.

After your internal review you have 30 days to contact the Ombudsman to seek an external review. The Ombudsman can extend this time requirement if appropriate.

The Ombudsman has the power to confirm, vary or reverse the determination the subject of the review under section 39(11) of the FOI Act.

The Ombudsman can carry out an investigation into the subject matter of the application. If it appears that the DCP has failed to properly sort out or compile documents relevant to the review or to undertake consultations relevant to the review that should have been undertaken it can require DCP to compile documents or undertake consultations; or require DCP to attend at a time and place to sort and compile said documents.

The Ombudsman may try to facilitate a settlement between the parties to a review at any time during the review and suspend proceedings at any time to allow an opportunity for settlement to be negotiated.

### **CARER INPUT:**

For further information about the Ombudsman process, refer to the CF&KC-SA Ombudsman Carer Guide, available on the CF&KC-SA website.

### **SACAT review**

Division 2 Section 40 of the FOI Act allows for a party to seek a review in SACAT.

Following either the internal review or the Ombudsman review, you have 30 days to apply to SACAT to review the decision under section 34 of the SACAT Act.

SACAT will examine the information that was available at the time of the original decision and consider any further evidence that it deems relevant. The Tribunal will rehear the matter with a view to reaching the correct or preferable decision.

Please note: Section 40(4) of the FOI Act stipulates that if a party lodges a review application with the Ombudsman, a SACAT review cannot be commenced until a decision is made by the Ombudsman. In addition, once a SACAT review has commenced, it bars any review being lodged with the Ombudsman.

**CARER INPUT:**

For further information about the SACAT process, refer to our Reviewable Decisions and SACAT Carer Guides, available on the CF&KC-SA website.

For more information, or to discuss your personal circumstances, please contact us:

**Email:** [support@cfc-sa.org.au](mailto:support@cfc-sa.org.au)

**Freecall:** 1800 732 272

You can contact the DCP's FOI officer:

**Email:** [DCP.FOI@sa.gov.au](mailto:DCP.FOI@sa.gov.au)

**Freecall:** 8226 4399

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