



# Applying for documents during the COVID-19 pandemic

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The right to access documents under the *Freedom of Information Act 1992 (FOI Act)*, subject to some limitations, has not changed because of the COVID-19 pandemic. However, during this unique period, the way agencies deal with applications may change and there are likely to be delays. The Office of the Information Commissioner (**OIC**) encourages appropriate flexibility and patience at this time. The following information is intended to assist applicants to understand how the pandemic may affect the progress of their access and amendment applications.

## Communicating with agencies

Many agencies are currently working remotely. FOI staff in agencies may be mostly communicating electronically and may have limited or no access to physical mail. If possible, try to lodge your FOI application electronically (for example, by email or online).

**Remember:** You may not need to make an FOI access application at all – before you lodge an application, contact the FOI Coordinator at the agency by email to ask whether the documents you want are already available without the need to use the FOI process.

If you cannot find an email address for an agency, contact the OIC at [info@oic.wa.gov.au](mailto:info@oic.wa.gov.au) for assistance.

## Timeframes

Agencies may need to ask for extensions of time to deal with applications and issue decisions during this period. Practical issues during the COVID-19 pandemic include partial or full office closures; officers working remotely; and officers being on leave or redirected to alternative duties to provide essential services. These issues are likely to adversely impact the ability of agencies to process FOI applications and meet the timeframes prescribed under the FOI Act.

If an agency asks you for an extension of time, please bear in mind the current unique circumstances when considering their request. If you are concerned about the length of additional time the agency has asked for, you could contact them to discuss other options.

If an agency is not able to give you a decision within the timeframes allowed under the FOI Act (including within any agreed extension of time), the agency will be deemed to have made a decision to refuse you access to the requested documents, which results in you being able to seek review under the FOI Act. For more information about your review rights based on delay, please see our publication – *What if the agency delays making a decision?* available on our website at <https://www.oic.wa.gov.au/en-au/For-the-Public/What-if-the-agency-delays-making-a-decision>.

In the current circumstances, the OIC strongly encourages agencies and applicants to take a flexible and practical approach to managing applications and to act reasonably and in good faith so that intervention by the Information Commissioner is not required. The OIC

encourages applicants and agencies to engage meaningfully to find an outcome that works.

While every effort is being made to resolve external reviews as quickly as possible, the COVID-pandemic is also adversely impacting the ability of the OIC to deal with external reviews in a timely manner. As such, the Commissioner considers that it is in the interests of applicants to agree to reasonable requests from agencies to extend the time for an agency to deal with an access application.

### **Temporarily inaccessible documents**

During this period, agency staff may be working remotely either fully or partly and some offices may be physically closed. This may result in agency officers having reduced or limited access to agency documents. In particular, hard copy documents may not be accessible and it may not be possible for officers to physically search for documents. If this happens, the agency might ask whether you are willing to exclude the inaccessible documents from the scope of your application, or to reduce the scope of your application, so the agency can deal with the documents it does have access to and give you a decision sooner. The agency may also invite you to withdraw your application entirely.

It is your decision whether you agree to either reduce or withdraw your application. If you do agree to either of these requests, it open to you to make another application at a later date for the document(s) that cannot be currently accessed.

### **Exercising your review rights**

If you are not satisfied with the agency's decision on your application, you have the right to seek review as set out in the FOI Act. More information about review rights is available in our publication, *Review of agency decisions*, available on our website at <https://www.oic.wa.gov.au/en-au/FTP014>.

### **Further questions**

If you have any general questions, please contact the agency you are applying to or the OIC's Advice and Awareness Service by email to [advice\\_and\\_awareness@oic.wa.gov.au](mailto:advice_and_awareness@oic.wa.gov.au)

**Note:** This Information Sheet is intended as a general guide only and should not be viewed as legal advice.<sup>1</sup>

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<sup>1</sup> We acknowledge that this publication is partially based on material developed by the Queensland Office of the Information Commissioner and the Victorian Office of the Information Commissioner. It has been adapted to describe the requirements of the FOI Act (WA).