



**ARMS**  
Archives & Records  
Management Services

University Recordkeeping Manual

Part Nine

**FREEDOM OF INFORMATION**

# Part 9 – Freedom of Information

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# UNIVERSITY RECORDKEEPING MANUAL

## **Part 9 - Freedom of Information**

### **1. Introduction**

The University of Sydney falls within the jurisdiction of the NSW Freedom of Information Act, 1989. Briefly, the Act requires information concerning documents held by the University to be made available to the public, to enable a member of the public to obtain access to documents held by the University and to enable a member of the public to ensure that records held by the University concerning his or her personal affairs are not incomplete, incorrect or out of date.

By definition, a "member of the public" might be a staff member or student of the University, a member of the general public, or an employee or officer of another agency or organisation. All may apply for access to documents; however some documents may be exempted from release under the Act. Applicants are usually not able to gain access to personal documents of others. The Act contains review and appeal mechanisms which are required to be explained to applicants where applicable. FOI matters can be reviewed by the NSW Ombudsman or the NSW Administrative Decisions Tribunal.

### **2. Policy**

In June 1989, Senate resolved to adopt the following recommendations of the Academic Board concerning the NSW Freedom of Information Act (89/120):

- that the Senate express its support for the intent of the Act and endorse the concept of Freedom of Information as University policy;
- that, for purposes of the Act, the Senate resolve that the University comprise any officer of the University and any part of the University that exists or operates by virtue of or subject to the authority of the Senate;
- that the Senate resolve that, for purposes of the Act, a document is the University's if it is a document to which the University has an immediate right of access, if it is a document that is in the possession, or under the control, of a person in that person's capacity as an officer of the University, or if it is a document created by an officer of the University in the normal course of that person's duties for the purposes of the University or for the purposes of the person as an officer of the University;
- that the Senate resolve that as far as is practicable, the University look to means of making information available that will obviate the need for formal applications to be made in accordance with the Act;

- that the Senate ask the appropriate officers of the University to maintain regular consultation with their counterparts in the other Universities in NSW with a view to achieving some consistency of approach in the implementation of the Act

### **3. Guidelines for making FOI applications.**

#### **3.1 What sort of information can be sought?**

Any kind of personal or non-personal information. Personal information includes academic records, staff records, health, welfare and superannuation records, and examination and training records. Non-personal information includes policy and procedure documents, research materials, instruction and procedure manuals, and management records. Information can be in the form of written documents, certificates, files, computer printouts, maps, films, photographs, tape recordings and video recordings.

#### **3.2 Making an FOI request**

All applications must be made in writing and be accompanied by the correct fee (see below). We require an address in Australia and a contact telephone or facsimile number or e-mail address. Applicants should provide as much information as possible and identify as clearly as possible the document they wish to see. File reference numbers or specific dates should be provided if available. Applicants may also specify how they wish to access the material, such as inspecting the documents or being provided with copies. Most applicants prefer to be provided with copies of documents released as a result of their application.

#### **3.3 What does the University do when a request is received?**

We have a responsibility to deal with requests as soon as possible. The applicant will be contacted if any difficulties arise. We advise in writing within 21 days that the information is available, or if the request has been deferred or refused. This is called a 'determination'. The response period may be extended by a further 14 days if special circumstances apply, such as the need to consult with a third party.

#### **3.4 How is access to the information provided?**

If the information requested is in hard copy format, we will either let the applicant know when and where they can see the document or provide them with a copy. If they have asked for access to information that is not in written form, such as video tapes, sound recordings or photographs, or computerised data, arrangements will be made for them to hear or view the material.

#### **3.5 Fees for making an application**

The Freedom of Information (Fees and Charges Order) 1989 enabled the University to set FOI fees within a range. The University does NOT have the discretion to waive fees.

**3.5 (a) *Personal affairs*:** Currently the application fee for documents concerning the applicant's personal affairs is \$20. Reductions of 50%

are available in some circumstances. Please contact the FOI Coordinator for more information. The application fee for personal affairs documents includes 20 hours processing time. Anything beyond this will be charged at \$30 per hour if no reduction is applicable.

**3.5 (b) Non-personal applications:** Applications for documents which do not concern the applicant's personal affairs attract a \$30 application fee and an hourly processing charge of \$30, assuming no reduction in fees. There is NO free time included in the application fee for non-personal applications. Processing fees cover time for locating the information, decision-making, consultation where necessary and any photocopying.

### **3.6 Can the University refuse to provide access to information?**

Yes. A request for information may be refused if:

- the document is exempt under the Act;
- dealing with it would unreasonably divert the University's resources from its normal functions. (However, before refusing a request, the University must offer to help to amend the application so that work may be carried out without disruption)
- the document is already available through normal policies and practices;
- the document is a part of the University's library collection.

## **4. Reviews and Appeals**

### **4.1 Internal Reviews**

#### **4.1.1 What is an Internal Review?**

If an applicant is unhappy with an FOI determination, or if no decision has been made within 21 days of the application being received, they are entitled to ask for an internal review by the University within 28 days of being advised of the determination, or 49 days from applying where no determination has been made. Applicants may apply for an internal review if:

- They have been refused access to a document;
- They have been refused access to part of a document;
- They have been refused a request to amend a personal document;
- They believe they have been charged too much;
- They have been given access to a document but access has been deferred;
- They are a third party specified in the documents but have not been consulted about giving access to another person; or
- They have been consulted, but disagree with a decision to release the documents.

#### **4.1.2 How to apply for an Internal Review**

Applications for internal review should be made in writing and addressed to the FOI Coordinator, A14, University of Sydney 2006.

An application fee must be enclosed. The fee is currently \$40, except where the initial application fee was discounted.

#### **4.1.3 How does the University process Internal Review applications?**

Someone senior to the person who made the original FOI determination will undertake the Internal Review. The applicant will be advised of the outcome of the Review within 14 days.

## **4.2 External appeals**

### **4.2.1 NSW State Ombudsman**

If an applicant has already sought an internal review and is unhappy with the results, the NSW State Ombudsman can intervene on their behalf where an agency:

- Takes an unreasonable time to process the FOI request;
- Imposes an unreasonable charge for access to information; or
- Refuses to give access to information that is not exempt.

Although the Ombudsman is able to investigate complaint, he or she cannot change or reverse a decision.

The Ombudsman can recommend that:

- It is in the public interest to give access to a document which has been refused by the agency as exempt;
- The decision of an agency be reconsidered;
- Action be taken to change the agency's conduct;
- Reasons be given for a decision; or
- The law or practice is changed.

The Ombudsman cannot deal with matters:

- Which are before the Administrative Decisions Tribunal;
- Where the information has been made exempt by a Ministerial Certificate;
- Where a request has been made for access to, or amendment of, a Minister's records;
- Where the applicant has complained to the Ombudsman under the Ombudsman Act about an agency and the Ombudsman previously has examined the information in relation to that investigation; and
- Where the Ombudsman has made a decision under the FOI Act.

No fees are payable for a review by the Ombudsman.

#### **4.2.2. The NSW Administrative Decisions Tribunal**

If the applicant wishes to pursue the matter further, they are entitled to take their appeal to the Administrative Decisions Tribunal in NSW. They must lodge the appeal within 60 days of the University's decision on their request for internal review or within 60 days of being advised on the Ombudsman's decision.

The Administrative Decisions Tribunal may:

- Confirm the University's original decision;
- Disallow that decision and make another in its place; or
- Pass the matter back to the University to be dealt with as directed by the ADT.

The Administrative Decisions Tribunal does not have the power to determine that access can be given to an exempt document.

The applicant may be required to meet the costs involved in taking your appeal to the Administrative Decisions Tribunal. For example, a nominal application fee of around \$80 may be charged. However, one of the aims of the ADT is to provide an accessible mechanism for the hearing of appeals and low fees or charges assist to achieve this aim. Contact the Registrar of the ADT on Telephone (02) 9223 4677 for advice on fees and charges.

### **5. Advice to University staff on FOI**

If approached by another staff member, a student or a member of the public requesting access to University documents, first determine whether the document can be provided to the applicant through normal channels. For example, University policies can be made available without a formal FOI application. Also staff members are able to access their own staff file and students can access their own student file.

When the University receives a formal FOI application, the FOI officers will write to the staff or offices holding the documents requested and ask that those documents be forwarded for appraisal. Should you receive such a request, please respond fully and promptly. You are required to supply ALL the documents relevant to the application. It is the responsibility of the person making the FOI determination (usually the Registrar) to decide, under the terms of the ACT, which documents may be released and which may be exempted from release.

If you have any questions, contact Tim Robinson or Anne Picot. Contact details are given below.

## **6. University contact information:**

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