



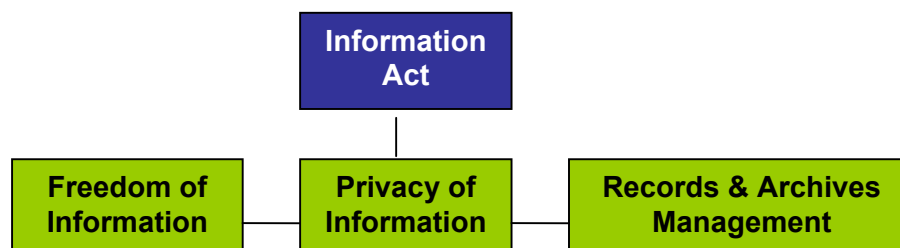
Information Act Summary¹

Introduction

This summary has been prepared for informative purposes only. It intends to provide a brief overview of the main components contained in the *Information Act* (the Act) in plain English and is not intended to set out the law relating to FOI, privacy and records and archives management.

The Bill was introduced in the Northern Territory Legislative Assembly on 14 August 2002 and was passed on 8 October 2002, following a period of extensive public consultation on the draft Information Bill. The Bill was assented to on 8 November 2002 and is to commence no later than 1 July 2003.

The Act is unique, for the reason that no other jurisdiction in Australia combines three related issues into one piece of legislation. It overcomes the inconsistencies and conflicts that arise when matters are dealt with through separate pieces of legislation.



Collectively, the Act will promote government openness and accountability through the free flow of government information outside of the statutory scheme. It will encourage a culture of access to government information subject only to the need to protect essential public interests and the private and business interests of persons in respect of whom information is held by public sector organisations. Ultimately, it will make our public institutions work more effectively.

Components of the Act

The purpose of the Act is:

1. to provide a right of access to information (government and personal) held by a public sector organisation and for the correction of personal information;
2. to protect the privacy of personal information held by a public sector organisation;
3. to establish the position of an independent statutory Information Commissioner;
4. to provide for appropriate records and archives management.

¹ Reference: Information Act Summary, Northern Territory Treasury. Thanks to Jenny Wollitz.

Timeframe

The Act applies to government information that was created or received up to 10 years before commencement, and to personal information created at any time. These parameters aim to balance access against recognition that it may be difficult for public sector organisations to locate and provide older information.

Disclosure of information

To facilitate accountability, the Act encourages public sector organisations to provide as much government information to the public as is reasonably possible and provide this information promptly, provided it is in the *public interest* to do so. Much information is already made publicly available through numerous government publications and websites, which will remain unchanged under the new regime. The public sector is also encouraged to ensure that personal information is accurate, complete and up-to-date.

Information that must be disclosed by the public sector at least once each calendar year, includes:

- description of structure and functions of organisation
- description of type of information held by organisation
- description of procedures for providing access to information and for correcting personal information and details of a contact officer for the purpose of inquiries and requests.

1. INFORMATION ACCESS AND CORRECTION RIGHTS

Access to Government and Personal Information

Freedom of information creates a legal right of access to government information and personal information held by government. The intention is to strike a balance between the competing interests by giving members of the public a right of access to information held by the government. This would only be restricted by circumstances where disclosure of certain information would be contrary to the public interest due to potential prejudicial effect on essential public interests or on the private or business interests of other persons.

Exemptions

Public sector organisations may decide to refuse access to information because it falls under one of the public interest exemptions under the bill, or where providing access would unreasonably interfere with the operations of the organisation.

The legislation provides for two categories of exemptions –

- *Absolute exemptions* – information is exempt from disclosure because it is conclusively presumed that it is against the public interest to do so.

- *Public interest test exemptions* – information that is subject to a public interest test, where it must be shown that the public interest against disclosure outweighs the public interest in disclosure.

Exemption Certificates

An exemption certificate acts as conclusive evidence that information is exempt because disclosure is not in the public interest.

The Chief Minister is the only person with power to issue exemption certificates for the removal of information from the ordinary review and appeal processes of the legislation. Exemption certificates are issued to protect particularly sensitive information confined to:

- Cabinet and Executive Council information
- Security and Law enforcement information
- Privacy and Cultural information

An exemption certificate can only be issued for two years or until it is revoked by the Chief Minister. This is based on the premise that public interest may have altered over the time period and that the original justification for issue of the certificate may no longer exist.

Third Party Information

Where information is about a third party, a public sector organisation must seek the views of that party prior to making a decision to grant access. If a decision to allow access is subsequently made, a 30-day notice period is applied to allow the third party to lodge a complaint to the Information Commissioner for further determination.

Correction of Personal Information

A feature of the right to access government information, is the ability to request correction of personal information where a member of the public believes that the information regarding them is incorrect, incomplete or out of date. This legal right is not absolute because it must be balanced against the rights and interests of other people.

Information Access and Correction Procedures

The Act provides for the implementation of procedures to facilitate the right to access information, or, in the case of personal information, to have it corrected if it is inaccurate. This comprises:

- how to make a request (*in writing, what details are required*);
- a 30 day response time;
- how access is to be granted (*in full/part, edited document, time/place, applicable fees*);
- correction of information;
- the content of the notice of the decision (*notification of decision in writing*);

- extending the time limit for responding in order to make decision;
- transferring a request to a more suitable government body;
- dealing with vexatious or repeated requests;
- review by the public sector organisation of the initial decision.

2. PRIVACY PROTECTION OF PERSONAL INFORMATION

The interrelationship and links between freedom of information and privacy are significant. The clearest of these is that disclosure of an individual's personal information to another person has the potential to invade that person's privacy. Personal information means information in any form about an individual from which that person is capable of being identified. Consequently, the Act includes as an exemption to the right of access, the disclosure of information that would be unreasonable *interference* with a person's privacy.

Information Privacy Principles

Ten Information Privacy Principles (IPPs) provide the framework for the collection and handling of personal information by public sector organisations. The IPPs are scheduled to the Act and are drawn from national privacy principles of the federal legislation that commenced operation on 21 December 2001. The IPPs will assist in the protection of personal information and are a schedule to the Act.

Interference with Privacy

An interference with a person's privacy occurs if a public sector organisation contravenes an IPP, a code of practice or an authorisation.

Code of Practice

In order to ensure both flexibility and the need in some cases for more specific application of the principles, it may be feasible to have a code of practice approved by the Information Commissioner, which specifies the method of application and compliance with the IPPs.

3. APPOINTMENT OF INFORMATION COMMISSIONER

The Act provides for the appointment of an independent officeholder, the Information Commissioner, to oversee the freedom of information and privacy provisions of the Act.

Functions of the Information Commissioner

The Information Commissioner will have the responsibility of actively promoting the principles of freedom of information and privacy, monitoring public sector's response to information access requests, and appraising privacy protection of personal information. Specific functions of the Commissioner include the following:

- develop and issue guidelines to public sector organisations about freedom of information, correction of personal information and privacy protection;
- provide advice and training on the freedom of information and privacy provisions of the bill to public sector organisations, includes assistance on how to apply the public interest test;
- conduct audits of the records held by organisations to determine the extent of compliance with the privacy provisions;
- examine and assess proposed legislation and policies relevant to freedom of information and privacy;
- research and monitor developments in relation to freedom of information and the protection of privacy;
- undertake educational programs to promote public awareness of freedom of information and privacy, including making public statements about relevant legislation matters;
- consult and cooperate with other persons and bodies in relation to freedom of information and the protection of privacy.

Powers of the Information Commissioner

The Commissioner holds the powers that are necessary for performing the functions under the Act or any other Act.

The Commissioner will be able to investigate complaints arising from access applications or allegations of interference with privacy. The Commissioner controls the power to serve a compliance notice, conduct an audit, mediate complaints or schedule a formal hearing for final determination. Where a person opposes a decision made by the Information Commissioner, the decision may be appealed in the Supreme Court, but only on questions of law.

Powers comprise entitlement to full and free access at all reasonable times to the records of a public sector organisation and requiring an organisation to answer a question or produce a record.

Although the Commissioner's staff is given authority to assist individuals with completing applications and handling complaints, the Commissioner's power does not extend to providing legal advice or delegation of power without the approval of the Minister.

4. RECORDS MANAGEMENT

An effective records and archives management framework underpins the freedom of information and privacy components of the legislation and is important to keep costs down, ensure better management of records and drive effective implementation. This component of the Act will therefore assist government record keeping by setting out the records management responsibilities of public sector agencies, including Government Business Divisions and Government owned corporations. It will be the responsibility of Chief Executives of every public sector organisation to ensure compliance with this part of the Act, as well as ensuring the inclusion of a statement in the organisation's annual report verifying compliance. The obligations of public sector organisations within the records and archives management framework include:

- protecting and preserving records;
- keeping full and accurate records of government activities and operations;
- establishment and maintenance of a records management system;
- monitoring and reporting on the records management system;
- keeping technology-dependent records accessible, so that they are capable of being read and reproduced.

The Archives Service will prepare standards for the obligations of public sector organisations to protect and manage records. These standards will address the creation, maintenance and security of records; the appraisal of records to determine their continuing value; the transfer of records to Territory Archives and the disposal of records with no archival value.