



Public Trustee

Freedom of Information (FOI)

Information statement

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Freedom of Information Act 1992 (WA) (“FOI Act”)

The FOI Act gives members of the public the right to access Public Trustee documents, subject to some limitations. It also lets people seek changes to their personal information if they feel it is inaccurate, incomplete, out-of-date or misleading.

The FOI Act can be viewed at legislation.wa.gov.au. The Office of the Information Commissioner provides a guide on the right to access documents at oic.wa.gov.au.

Before submitting an FOI request, you are encouraged to email us on public.trustee@justice.wa.gov.au to discuss whether:

- we hold the relevant documents – they may be held by another government agency; and
- you may be able to access them under our own enabling legislation s47(2) of the *Public Trustee Act 1941* - without an FOI application.

Although not required to do so, you should tell us why you seek access to the documents and/or information, or if you plan to use it for a specific purpose. This will assist us with clarifying which document you are seeking, help to focus your request, and provide the documents more quickly.

The types of documents you may request can be stored in diverse formats, ranging from paper files to electronically stored information (if unavailable in the requested format, access may be given in a different format).

Before proceeding with an application, it is important to understand FOI is **not** for:

- asking questions. The FOI Act requires agencies to provide access to documents (subject to limitations). If you are seeking answers to questions, you should consider contacting the Public Trustee outside the FOI process. Under FOI, your best approach is to request the documents you think might help answer your questions.
- documents already publicly available for download, inspection or purchase, including on a government agency’s website. Contact the relevant agency and ask if the documents you are seeking are already available to the public.
- documents held by individuals or private organisations. The FOI Act applies to documents held by WA State Government agencies (including certain documents held by Ministers) and local governments (but not the Commonwealth).

NOTE: If you ask for access to “everything” on a particular subject, we will ask you to narrow the scope of your application to reduce the work involved. Under the FOI Act, we are permitted to refuse to deal with applications if they would divert a substantial and unreasonable portion of our resources away from other operations.

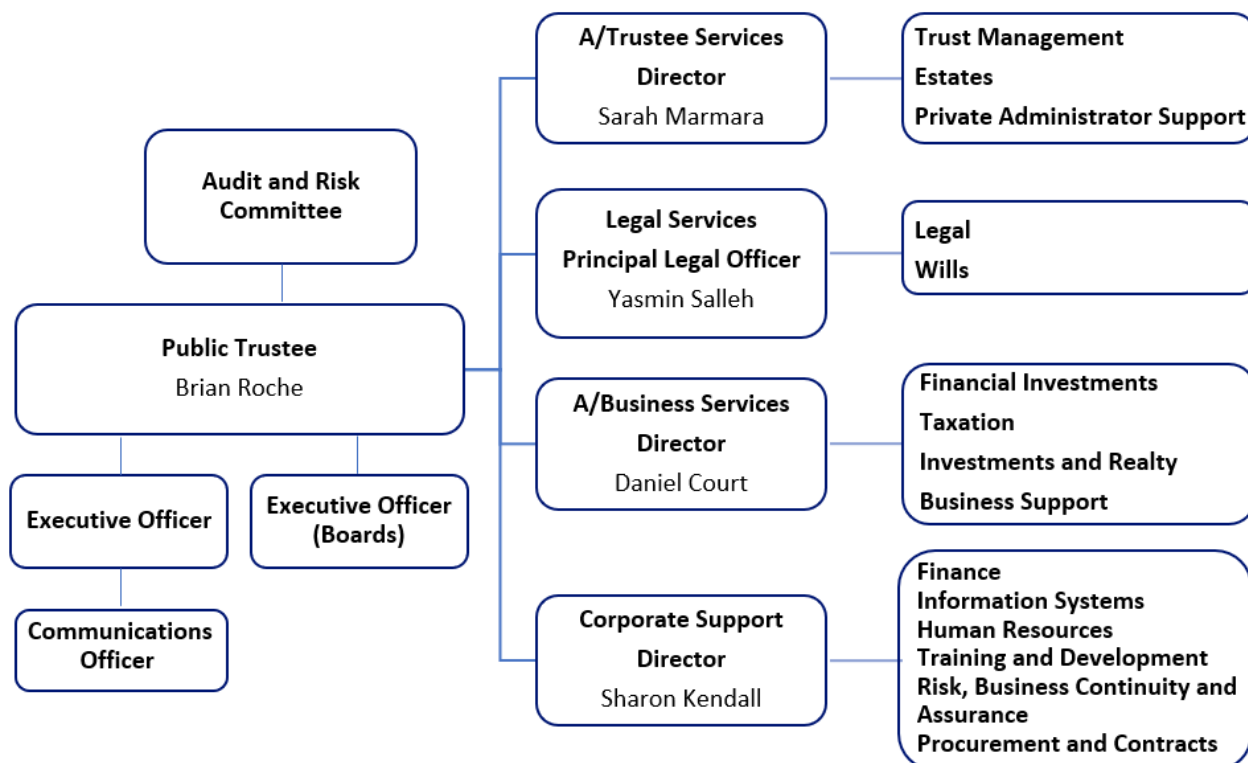
In relation to personal information of a private nature, the Information Commissioner has consistently found there is a very strong public interest in maintaining the privacy of individuals. If you are seeking information about another person, the onus is on you to establish it is in the public interest for the private information about that person to be disclosed to you.

If you are searching for Court transcripts or documents of a judicial nature, please contact the relevant Court directly. These documents are accessible outside FOI provisions.

What does the Public Trustee do?

The Public Trustee offers independent and professional trustee and asset management services to the people of Western Australia.

Organisational structure



Services

The Public Trustee offers a range of fee-based services accessible to Western Australians, including:

- managing the personal financial and legal matters for people who are incapacitated, infirm or who have intellectual disability;
- providing support to and examining the accounts of private personal financial administrators;
- acting as trustee for Court-appointed trusts; when appointed to manage personal injuries or criminal injuries compensation, or by Deed; for minors (people under 18 years);
- administering the Estates of people who have died;
- preparing and giving advice on making Wills;
- preparing Enduring Powers of Attorney and, as donee, providing a personal asset administration service; and
- engaging in investment management

Document access table

The table below is a guide to the many documents available without an FOI application. Some are available free while others have a cost.

Information		
	Free	Fee ¹
Annual Report	Yes	No
Brochures and Guides	Yes	No
Business Area Policies and Procedures	No	Yes
Client Annual Financial Statements	Yes	No
Client Files	No	Yes
Common Account interest rates	Yes	No

Making an FOI application

FOI applications can be made to gain access to a document, amend personal information or review a previous FOI decision regarding access to, or amendment of, a document. You will need to specify actual documents, rather than entire files.

Application forms are available from Public Trustee Wills Reception or can be downloaded from publictrustee.wa.gov.au.

Using an application form is not mandatory but all FOI applications must be in writing and:

- give enough information so the requested information can be identified (dates, locations, subject matter);
- provide an Australian address;
- give any other information or details required under the *Freedom of Information Regulations 1993*; and
- be lodged with the Public Trustee, accompanied by the \$30 application fee (non-personal applications only).

If you are applying for access, you must provide valid identification.

If you are acting on behalf of another party, you must also provide legal proof of authority to act for them.

Applications will be acknowledged in writing.

¹ According to the current Public Trustee Scale of Fees

FOI fees and charges

Fees and charges below must be paid in full before access to non-exempt documents will be permitted:

- Application fee (non-personal information) \$30

Charges

- Time taken for a routine search for a document (per hour or pro rata) \$30
- Supervised access time (per hour or pro rata) \$30
- Time spent photocopying (per hour or pro rata) \$30
- Photocopying (per page) 0.20c
- Time spent transcribing a document from tape or other medium \$30
- Charge for duplicating a tape, film or computer information cost Actual cost
- Charge for delivery, packaging and postage cost Actual cost

An estimate of charges will be given if the time spent dealing with an application for non-personal information is likely to exceed one hour. A deposit of 25-75% of the estimated charge may be requested.

No fee or charge is payable for an application for personal information about the applicant.

Personal information can be:

- factual or routine information – examples could be date of birth, length of employment or qualifications
- opinions or evaluative material such as advice or recommendations of a third part such as records of interviews or details in personnel records.

Except for individuals currently in custody, applications to access the personal information of an applicant must be accompanied by proof-of-identification documentation.

Any applications submitted for someone else must include written permission from that person.

All applications may be lodged at the Public Trustee Will Reception or mailed directly to the address below.

Under the FOI Act, the Public Trustee is required to process requests for information within 45 days of receiving the application. There is provision under s 23 of the FOI Act to refuse access to documents and information on a range of grounds.

Applicants have a right of appeal in these cases, initially to the Public Trustee and subsequently to the Information Commissioner.

Who do I contact?

Public Trustee Freedom of Information Coordinator

Address: 553 Hay Street, Perth WA 6000
Postal: GPO Box M946, Perth WA 6843
Phone: 1300 746 116 Fax: (08) 92211102
Email: public.trustee@justice.wa.gov.au

FOI decision-making positions

Director Trustee Services
Director Corporate Support
Director Business Services
Senior Legal Officers
Legal Officers

Notice of decision

The applicant will receive, in writing, notice of the Public Trustee's decision relating to the FOI request with the following information:

- date of the decision
- name and job title of the decision-maker
- reasons for deleting any matter
- reasons for deferring access
- arrangements for giving access
- reasons for refusing access to any matter
- amount and basis for any fees
- rights of review and procedures to be followed.

What types of documents are exempt?

In some cases, certain documents cannot be shared because they contain truly sensitive information and real harm will be caused by its disclosure. These exemptions are in place to balance the public's right to access government documents with the need to protect the government's legitimate interests, as well as third parties who deal with government.

The exemptions listed in the FOI Act are based on the premise that disclosure of the information would:

- reveal personal information about an individual (whether living or dead);
- cause damage to business interests, intergovernmental relations or law enforcement; or
- adversely affect the operations of agencies or their decision-making processes.

Right to review

Applicants have the right to submit a written request for a decision review. This must be done within 30 days, after being given notice of the decision. The review is to be conducted by another person, not the original decision-maker. The Public Trustee must then respond with a written notice of the review decision within 15 days. No fees are involved.

If applicants remain dissatisfied with the review decision, they may lodge a written complaint to the Office of the Information Commissioner within 60 days, following the internal review decision (30 days for third parties). The Commissioner's decision is final unless an appeal is made to the Supreme Court on a question of law.

Office of the Information Commissioner

Should you have any queries, or require more information about your review rights (or the FOI process generally), you may wish to contact:

Office of the Information Commissioner

Phone: (08) 6551 7888

Email: info@oic.wa.gov.au

Freecall: 1800 621 244 (for country landline users) Web: www.oic.wa.gov.au

Public Trustee's services for the public

The Public Trustee provides trustee services to the community. Any member of the public may choose to use those services, at their discretion.

If a member of the public chooses to use Public Trustee services, the agency is bound by the terms of the engagement and relevant legislation. Principal functions and relevant legislation are described below:

Function	Source of authority
Administration of Estates Any person may appoint the Public Trustee as executor of their Will.	<i>s8-19 Public Trustee Act 1941</i>
Managing damages awarded by Courts The Public Trustee acts as trustee in relation to money awarded by the Courts to minors and other people considered incapable of handling such funds.	<i>s37 Public Trustee Act 1941</i>
Management of uncared-for-property Where the owner of any real or personal property in the State is absent, or the owner is unknown, whether they are dead or alive, the Court or a Judge in Chambers may appoint the Public Trustee to act.	<i>s37A Public Trustee Act 1941</i>
Managing a person's Estate on an agency basis The Public Trustee can be appointed to act as an agent.	<i>s7 Public Trustee Act 1941</i>
Administration of Represented Persons' Estates The Public Trustee may be appointed by the State Administrative Tribunal to act as administrator.	<i>s64 Guardianship and Administration Act 1990</i>
Custodian Trustee Upon order of the Court, by the trust deed, or by any person having the power to appoint new trustees, the Public Trustee can be appointed as custodian trustee.	<i>s22 Public Trustee Act 1941</i>
Administration of incapable patients The Public Trustee may apply to be appointed as administrator.	<i>s24 Public Trustee Act 1941</i> <i>s39 Guardianship and Administration Act 1990</i>
Investing money under a Supreme Court order The investment of any money under the control, or subject to any order, of the Supreme Court is made by the Public Trustee.	<i>s37 Public Trustee Act 1941</i>
Advisory Trustee Allows the Public Trustee to act with an advisory trustee.	<i>s21 Public Trustee Act 1941</i>
Trustee The Public Trustee may, unless expressly prohibited by the terms of a trust, be appointed or become a trustee.	<i>s20 Public Trustee Act 1941</i>
Wills In addition to the above powers, the Public Trustee prepares Wills – for a fee – for anyone wishing to make a Will appointing the Public Trustee as executor. The Public Trustee can also administer the Estates of people who die intestate (without a Will).	<i>Wills Act 1970</i>
Private Administration Support The Public Trustee examines the accounts of private administrators appointed by the State Administrative Tribunal. Private administrators are required to lodge annual accounts with the Public Trustee for examination.	<i>Guardianship and Administration Act 1990</i> <i>Administration Act 1903</i>

Legislation

Relevant legislation referred to in this guide:

- *Administration Act 1903*
- *Freedom of Information Act 1992*
- *Freedom of Information Regulations 1993*
- *Guardianship and Administration Act 1990*
- *Wills Act 1970*

Complete versions of the legislation can be found at www.legislation.wa.gov.au.