



# Freedom of Information Newsletter

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## Number 12 – March 2017

### *From the Information Commissioner – FOI in WA Conference*

Plans are well underway for the first 'FOI in WA Conference' to be held on 10 August 2017. I am pleased to announce that Professor John McMillan AO, inaugural Australian Information Commissioner and former Commonwealth Ombudsman, will be the keynote speaker for the event. Professor McMillan was a founding member of the Freedom of Information Campaign Committee which led the public campaign for enactment of the first freedom of information legislation in Australia.

The WA Government Chief Information Officer, Giles Nunis, and I will join Professor McMillan for a panel discussion about FOI in WA in 2017. Other sessions during the day will provide information and practical advice on a range of topics that FOI practitioners have told us they want to hear about.

More information about the conference and how to register is available at:

<http://foi.wa.gov.au/Conference2017>. The registration fee is only \$99 per person. I encourage agencies to include it in their budget for next financial year's development opportunities.

Registrations are limited to officers from State and local government agencies.

### *Did you know? – The objects of the FOI Act*

The objects of the FOI Act, outlined in section 3, are to enable the public to participate more effectively in governing the State and to make the persons and bodies that are responsible for State and local government more accountable to the public. For this reason, when dealing with requests for documents or making decisions under the FOI Act, agencies are not merely complying with an administrative process. They are dispensing justice to the people of Western Australia. For some ideas about giving effect to the objects of the FOI Act, see our publication, [Thinking outside of the FOI box](#).

### *Agency news – Third party consultations with ministerial offices*

In light of the recent WA election and newly formed State Government, agencies should be aware that third party consultations with ministerial offices may be affected.

Section 32 of the FOI Act provides that an agency is not to give access to a document that contains personal information about an individual unless it has taken such steps as are reasonably practicable to seek the views of the third party as to whether that information is exempt under clause 3 of Schedule 1 to the FOI Act.

Third party consultations with ministerial offices of the previous government should be undertaken with the relevant individual(s) directly and should not be sent to the ministerial offices of the current government, nor to the Department of the Premier and Cabinet.

The contact details of all current members of parliament, including former ministers, are available on the WA Parliament website.

Other steps to obtain the views of former ministers who are no longer members of parliament may include undertaking a White Pages and/or Google search for their publicly listed contact details.

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### ***Good news story – Successful reduction of the scope in the interests of the agency and the applicant***

An agency received an access application for ‘all submissions received’ by the agency in relation to a particular agency plan. The agency identified 594 individual submissions and approximately 3,000 pro forma submissions about the plan that were within the scope of the access application.

The applicant was given a breakdown of the categories of the 594 individual submissions held, i.e. commercial organisations; the general public; industry bodies; interest groups; landowners; local government; state government; and others. After further negotiations, the applicant agreed to limit the application to only the categories of submissions from State Government and industry bodies. This reduced the number of submissions within scope to 21 but provided the applicant with the submissions of most interest to the applicant.

Do you have a good news story that may assist people to understand effective FOI practices? If you do, please email us at [advice\\_and\\_awareness@foi.wa.gov.au](mailto:advice_and_awareness@foi.wa.gov.au).

### ***Recent decisions of the Information Commissioner***

#### ***Re Hollins and Western Australia Police*** [\[2017\] WAICmr 4 \(PDF\)](#)

The Commissioner was satisfied that the disputed document consisted of a confidential communication between the agency and a legal adviser of the agency made for the dominant purpose of giving legal advice. Accordingly, the Commissioner found that the disputed document was exempt under clause 7 of Schedule 1 to the FOI Act on the basis that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The agency’s decision was confirmed.

#### ***Re Seymour and Department of Transport*** [\[2017\] WAICmr 5 \(PDF\)](#)

The access applicant applied for documents relating to the transfer of ownership of a specific vehicle between two named third parties. The Commissioner considered that disclosure of the disputed documents would disclose personal information about individuals other than the access applicant and were on their face exempt under clause 3(1) of Schedule 1 to the FOI Act. In considering whether the limit on the exemption in clause 3(6) applied, the Commissioner was not persuaded that the public interest favouring disclosure of the disputed documents to the access applicant, in the circumstances of the case, were sufficient to outweigh the public interest in the protection of personal privacy of other individuals to whom the information related.

As the identity of the third parties was known to the complainant and was otherwise ascertainable, the Commissioner did not consider that the disputed documents could be edited so as not to disclose personal information about third parties. On that basis, the Commissioner did not consider that there was an obligation on the agency under section 24 to give access to edited copies of the documents. The Commissioner found that the disputed documents were exempt under clause 3(1).

The agency’s decision was confirmed.

#### ***Re Macdonald and City of Joondalup*** [\[2017\] WAICmr 6 \(PDF\)](#)

The access applicant applied to the agency for certain documents and the agency subsequently gave her full access to the documents located within the scope of her access application. The agency imposed charges for dealing with her application and reduced them by 25%. The complainant claimed that those charges should have been further reduced on the basis that she was impecunious. The complainant also claimed that additional documents existed within the scope of her application.

The Commissioner found that the agency’s decision to refuse access to further documents under section 26, on the basis they cannot be found or do not exist, was justified. The Commissioner also

found that the agency was not required to reduce its charges further because it had already reduced its charges by 25% in accordance with the *Freedom of Information Regulations 1993*.

The agency's decision was confirmed.

### ***FOI training news***

The 2017 training dates for agencies can be found [<HERE>](#). If a session is listed as fully booked, please register for the relevant waitlist. This will give us the opportunity to contact you if there are cancellations or, if there is considerable demand, to schedule another training session.

The **FOI Coordinators Workshop** introduces participants to the objects and principles of the FOI Act and the major features of the legislation. Topics include the role of decision-makers; FOI applications; exemptions; consultation with third parties; charges; notices of decision and review; amendment of records; publication of information; statistics; and reporting.

The **Decision Writing Workshop** is designed to enhance decision-makers' skills and confidence in writing a notice of decision that complies with the FOI Act. Participants will be expected to already have a basic understanding of the requirements of the FOI Act.

### ***Subscription and feedback***

[Subscribe](#) to the FOI Newsletter and decision announcements.

Click [<HERE>](#) to provide your feedback or suggestions for the FOI Newsletter.

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