



Freedom of Information Newsletter

Number 14 – July 2017

From the Information Commissioner – Dialogue between agencies and applicants

My office consistently encourages agencies and applicants to engage early in open and meaningful dialogue regarding the scope of an application with a view to finding an outcome which meets their needs. For example, an applicant may be able to obtain access to the requested documents more quickly and at a lower cost if they agree to exclude unwanted information from the scope of the application. This may help identify the documents the applicant really wants and stop the agency having to undertake unnecessary work.

FOI in WA Conference – 10 August 2017

Registrations for the inaugural FOI in WA Conference will close on 31 July 2017 or when our maximum number of registrations of 300 is reached, whichever is first. Register online at: <http://www.wa.ipaa.org.au/FOI-Conference.aspx>.

The conference program is now available online at <http://foi.wa.gov.au/Conference2017>.

Registration for the FOI in WA Conference is limited to Western Australian State and local government officers.

World of FOI – Solomon Lecture speaker announced

The Annual Solomon lecture, hosted by the Office of the Queensland Information Commissioner on 28 September 2017, will be delivered by Mr Kerry O'Brien. The theme of the lecture is the *Right to Information: Open and accountable government and the media's role* and will draw on the 30th anniversary of the Fitzgerald Inquiry as an opportunity to revisit the lessons learnt over the past three decades around open government including the media's role. While the lecture will take place in Brisbane, it will be live streamed on the web. For more information go to: <https://www.oic.qld.gov.au/training-and-events/right-to-information-day>.

Did you know? – Open Government Partnership and National Action Plan

The NSW Information Commissioner is leading the work of Australian Information Commissioners and Ombudsmen to develop - within the remit of their jurisdictions - uniform metrics on public use of information access rights and the collection and publication of this data. The objective is that Australia will be better able to measure and improve our understanding of the public's use of rights under access to information laws. More information is available on our website at: http://foi.wa.gov.au/en-us/Open_Government.

Agency news – Changes to the statistical returns for 2017/18

The Information Commissioner is required to report annually to Parliament about the number and nature of applications dealt with by agencies under the FOI Act during the year. This means that the Commissioner requires agencies to provide certain information to him each year. All agencies have been invited by email to complete an online statistical survey related to their FOI activity for the 2016/17 financial year.

Next year agencies will be asked to provide additional information in their statistical return about the number of access applications *not* dealt with within the prescribed period. Agencies have been informed of the additional question this year to allow them time to start collecting the information to be able to report at the end of the 2017/18 financial year.

Recent decisions of the Information Commissioner

Re 'S' and Department for Child Protection and Family Support [\[2017\] WAICmr 10 \(PDF\)](#)

The complainant applied for access to documents about investigations concerning the complainant's child. The Commissioner found that the disputed matter was exempt under clause 3(1) of Schedule 1 to the FOI Act.

The agency's decision was confirmed.

Re Gascoine and Shire of Chittering [\[2017\] WAICmr 11 \(PDF\)](#)

The Commissioner was satisfied that the disputed documents consisted of confidential communications between clients and their legal advisers made for the dominant purpose of giving or obtaining legal advice. Applying the Supreme Court decision in *Department of Housing and Works v Bowden* [2005] WASC 123, the Commissioner considered that it is not within his jurisdiction to determine whether the agency had waived legal professional privilege. Accordingly, the Commissioner found that the disputed documents were exempt under clause 7 of Schedule 1 to the FOI Act on the basis that they would be privileged from production in legal proceedings on the ground of legal professional privilege.

The agency's decision was confirmed.

Re Seven Network (Operations) Limited and Public Transport Authority [\[2017\] WAICmr 12 \(PDF\)](#)

The complainant applied for access to certain CCTV footage related to incidents at level crossings or railway stations. The Commissioner was not persuaded that the disputed matter contained personal information as defined in the FOI Act because he was not satisfied that the identities of the individuals in the footage were apparent or could reasonably be ascertained from the footage. On that basis the Commissioner found that the footage was not exempt under clause 3(1) of Schedule 1 to the FOI Act.

The agency's decision was set aside. This matter is now before the Supreme Court on appeal.

Re Harvey and Public Sector Commission [\[2017\] WAICmr 13 \(PDF\)](#)

The complainant applied for access to documents relied upon by the agency to form its view that another agency had not breached the grievance resolution standards in investigating the complainant's grievance. The Commissioner found that the disputed documents were exempt under clause 3(1) of Schedule 1 to the FOI Act.

The agency's decision was confirmed.

Re Wells and Legal Profession Complaints Committee [\[2017\] WAICmr 14 \(PDF\)](#)

The agency refused access to documents under section 26 of the FOI Act. The Commissioner was satisfied that there were reasonable grounds to believe documents of the kind set out in the access application would exist or should exist in the agency. Following additional searches by the agency, the Commissioner was satisfied that the agency had taken all reasonable steps to find the requested documents and found, under section 26, that further documents either cannot be found or do not exist.

The agency's decision was confirmed.

Re Jewish Community Council of WA Inc. and Curtin University of Technology [\[2017\] WAICmr 15 \(PDF\)](#)

The agency and a third party maintained that certain information contained in reports prepared by external examiners regarding the merits of a particular PhD thesis was exempt information under clause 3(1) of Schedule 1 to the FOI Act. The Commissioner considered that the limit on the exemptions in clauses 3(4) and 3(6) applied and found that the disputed information was not exempt under clause 3(1).

The agency's decision was varied.

Re Event Health Management and Shire of Busselton [\[2017\] WAICmr 16 \(PDF\)](#)

The complainant, a third party, sought review of the agency's decision to give access to documents including an events application and supporting documentation for a particular event. The Commissioner found that the disputed information was not exempt under clauses 4(3) or 8(2) of Schedule 1 to the FOI Act.

The agency's decision was confirmed.

Re Park and City of Nedlands [\[2017\] WAICmr 17 \(PDF\)](#)

The complainant applied for access to documents related to the agency's draft Town Planning Scheme 3 and draft Local Planning Strategy. The Commissioner found that the disputed documents were not exempt under clause 6(1) of Schedule 1 to the FOI Act as claimed by the agency.

The agency's decision was set aside.

FOI training news

The 2017 training dates for agencies can be found [<HERE>](#).

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

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