



# Freedom of Information Newsletter

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## Number 15 – September 2017

### *From the Information Commissioner*

This is my last FOI newsletter in my role as Western Australian Information Commissioner. It has been a privilege to serve the people of the State in that role for the last eight years. That time has brought many challenges but I am pleased to say that, overall, the administration of freedom of information in our State is on a very sound footing. While there will always be disagreements about the merits of disclosing particular documents, the FOI Act and the rights and obligations it creates are generally well respected as being an essential part of our Parliamentary democracy.

I leave the office in good hands, with her Excellency the Governor having appointed Principal Legal Officer, Ms Su Lloyd, as Acting Commissioner until the end of March 2018. Su will lead a team of dedicated and experienced professionals in the Office of the Information Commissioner who will continue to discharge their duties under the FOI Act. I encourage agencies to continue to work with the office to improve the standard of FOI administration across the sector.

Finally, I encourage everyone to remember that the two objects of the FOI Act, as clearly expressed by Parliament in section 3(1) of the Act, are to enable greater public participation in government and to make government more accountable to the public. If we always strive to make decisions that bring us closer to those objects, then we are well on the way to realising the vision set for us by Parliament.

### *World of FOI – Right to Know Day*

International Right to Know Day is coming up on Thursday 28 September 2017. It is on this day that the Office of the Queensland Information Commissioner will hold its annual Solomon Lecture, to be delivered by Mr Kerry O'Brien.

A link to the live stream of the Solomon lecture can be found at [www.ustream.tv/channel/the-edge-external-events](http://www.ustream.tv/channel/the-edge-external-events).

### *Did you know? – An estimate of charges is not necessarily subject to review*

If an agency thinks that the charges it will impose to deal with an access application might exceed \$25, it must notify the applicant of its estimate of charges and enquire whether or not the applicant wishes to proceed with the application (see section 17(3) of the FOI Act). Access applicants have a right to seek review of a requirement to pay a deposit or a decision to impose a charge (sections 39(2)(iv) and 65(1)(g)). However, providing an estimate of charges does not of itself create a right to seek review of the estimate. A notification of an estimate of charges is merely an estimate and is not a decision to impose a charge. The decision to impose a charge is included in the notice of decision. When providing an estimate of charges, agencies may require a deposit at the same time. This creates a right to seek review of the estimate.

### *Agency news – Information statements and statistical returns*

Machinery of Government changes have resulted in new agencies being created as of 1 July 2017. Section 96 of the FOI Act requires new agencies to make available an information statement within 12 months from the date an agency came into existence. Agencies can use their discretion as to

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whether their existing information statement is still relevant and can continue to be made available until such time as the updated information statement is available for publishing. A copy of updated information statements should also be provided to this office, either in hard copy or electronic format.

The [information statement guidelines](#) are available on the OIC's website.

The July newsletter advised that next year agencies will be asked to provide additional information in their statistical returns about the number of access applications *not* dealt with within the prescribed period.

The term 'permitted period' is defined in section 13(3) of the FOI Act as:

*For the purposes of this section the **permitted period** is 45 days after the access application is received or such other period as is agreed between the agency and the applicant or allowed by the Commissioner under subsection (4) or (5).*

Therefore, for the purposes of completing the data in the statistical return the permitted period could include one of three scenarios: (i) within the 45-day default period where there is no agreement between the parties or otherwise allowed by the Information Commissioner; (ii) within a period as is agreed between the agency and the applicant (this may be less or greater than 45 days); or (iii) within a period allowed by the Information Commissioner (this may be less or greater than 45 days).

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

#### ***Re Seven Network (Operations) Limited and Public Transport Authority [2017] WAICmr 18***

The agency refused to deal with the complainant's access application under section 20 of the FOI Act. The Commissioner was not satisfied that dealing with the application would divert a substantial and unreasonable portion of the agency's resources away from its other operations and found that the agency had to deal with the complainant's access application in accordance with the provisions of the FOI Act.

The agency's decision was set aside.

### **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**

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