



Freedom of Information Newsletter

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From the Acting Information Commissioner, Su Lloyd



In my role as Acting Information Commissioner, I have recently enjoyed the opportunity to deliver presentations and seminars on the FOI Act to law students at UWA, senior academic and administrative staff at ECU and legal practitioners at the Law Society of WA.

At each of these presentations I have stressed the pro-disclosure nature of the FOI Act and the fact that it provides a mechanism for any person to ask for documents of an agency, including documents held by local governments, subject to the exemptions set out in the FOI Act.

I encourage agencies to adopt a pro-disclosure mindset and approach, which would in my view benefit agencies in several ways:

- make the workings of government more visible and transparent to the public;
- build and enhance trust and confidence in the public sector within the community; and
- may reduce the numbers of formal FOI applications that agencies have to deal with.

I therefore encourage agencies to consider ways in which they can make more of their information accessible to the public without the need for formal FOI requests, and proactively seek to inform the community about what they do and how.

Many of you will shortly be taking leave during the festive season. However, the 'FOI clock' may keep on ticking during this time! See the article below regarding timeframes...and agencies should ensure that they are well prepared to deal with FOI applications during the holiday period.

I wish you all the best for the festive season and the New Year.

World of FOI – 10th International Conference of Information Commissioners

In September 2017 Information Commissioners and Deputy Information Commissioners from 39 jurisdictions across the world met in Manchester, United Kingdom, to explore issues including:

- innovations in access to information;
- the future of transparency;
- global models: how well do they work? and
- journalists, access to information and open data.

The Conference issued a resolution about the right of access to information and accountability of public services, which is available at:

<https://icic2017open.files.wordpress.com/2017/09/icic-2017-resolution.pdf>

Do you know how many access applications were made in WA in 2016/17?

A total of 17,306 access applications were made under the FOI Act in 2016/17. This was an increase of just under 2% from the previous reporting year. The Western Australia Police received 2,596 access applications. Health related agencies received 9,038, and local governments received 920 access applications. 90% of decisions made by agencies were to give access in some form.

Agencies received 284 requests for internal review. This compares to 264 in the previous year.

Agencies received 23 requests for amendment of personal information.

You can find out more about the number of access applications made to each agency in the 2016/17 financial year, the exemptions claimed, the access given and fees and charges imposed in the OIC Annual Report, which is available on our website at: <http://foi.wa.gov.au/en-us/AnnualReports>.

Agency news – Christmas holidays don't necessarily extend FOI deadlines – plan ahead

Applicants and agencies are encouraged to plan for the holiday period in relation to FOI applications with a full understanding of how the required timeframes in the FOI Act are calculated. During the next couple of months there will be public holidays and times when some agencies close for an extended period. These closures do not automatically mean that the timeframes outlined in the FOI Act are extended.

The FOI Act includes a number of timeframes within which decisions and applications for review need to be made. Public holidays and office shutdown-days are included in the calculation of the time in which a decision or application for review can be made. To assist you to calculate timeframes under the FOI Act, this office has created a guide, [Calculating time and days](#), which is available on our website. Some timeframes may be extended by agreement between an agency and the access applicant.

Good news story – Alternative access to documents

Agencies are not required under the FOI Act to create a new document in response to an FOI application. However, the FOI Act does not prohibit this course of action. In some circumstances an agency may choose to create a document to allow access to the requested information.

The OIC 2016 Annual Report includes an example where a local government received an access application for access to statements from two witnesses to a dog attack. The agency initially refused access in full to hand written statements on the basis that their disclosure may reveal the identities of some individuals. During the external review process, the agency was invited to consider providing access to a typed extract of each of the witness statements, with personal information - included the handwriting – deleted. Both the agency and the applicant accepted the proposal and the edited typed extracts were released.

Recent decisions of the Information Commissioner

RE 'U' and Western Australia Police [\[2017\] WAICmr 19 \(PDF\)](#)

The complainant sought access to documents relating to criminal charges brought against the complainant. The complainant did not pay the prescribed \$30 application fee for making an application for non-personal information. As a result, the agency claimed that the scope of the application was limited to personal information about the complainant. The agency gave the complainant access to edited copies of the requested documents on the basis that the deleted information was outside the scope of the access application. The Commissioner was satisfied that the information deleted by the agency was non-personal information and therefore outside the scope of the access application.

The agency's decision was confirmed.

Recent decision by the Supreme Court

S -v- Department for Child Protection and Family Support [\[2017\] WASC 305](#)

The complainant appealed a decision of the Commissioner to give access to edited copies of documents and to refuse access to a document on the basis that the disputed information was exempt under clause 3(1) of Schedule 1 to the FOI Act. The Supreme Court found that, in relation to the disputed information, where the “information (that is a record of oral verbatim statements made by the [complainant]) is not intertwined the Commissioner erred in failing to have regard to the fact that the person seeking the information is the sole and only source of the information”.

The appeal was upheld in part.

FOI training news – New dates for 2018 available now

The 2018 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.

Feedback and suggestions – Tell us what you think

We are interested in hearing what you would like to read about in the Newsletter. Do you have suggestions about ways we can assist you to better understand the requirements of the FOI Act? Click [<here>](#) to provide your feedback or suggestions for the FOI Newsletter and for our other Advice and Awareness services.

Subscription

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