

Dealing with requests for information 'on behalf of ...'

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Outline

- Context
- Section 98
- Scenarios
 - Helpers/advocates
 - Lawyers
 - Children and parents
 - organisations



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Context

Section 3(3)

Nothing in this Act is intended to prevent or discourage the publication of information, or the giving of access to documents (including documents containing exempt matter), or the amendment of personal information, otherwise than under this Act if that can properly be done or is permitted or required by law to be done.

Requests from other government agencies

- [Information Sharing between government agencies](#)
- Specific legislative powers eg ATOs powers



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Section 98 of the FOI Act

Without limiting the ability of persons to make applications on behalf of other persons generally, an access application or application for amendment may be made —

- a) on behalf of a child by the child's guardian or the person who has custody or care and control of the child;*
- b) on behalf of an intellectually handicapped person by the person's closest relative or guardian.*



Who and why?

Section 10 - A person has a right to access documents of an agency subject to and in accordance with the FOI Act.

Section 12 - An application must:

- be in writing;
- give sufficient information to identify the requested;
- give an address in Australia where notices can be sent; and
- pay the relevant application fee.

NOTE: establishing identity is not a requirement to make a valid access application, **but** remember section 29 if giving access to personal info



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Scenario 1

Jennifer Honey requests the medical file of Hilda Wormwood under the FOI Act.

- There is no prohibition of Ms Honey applying but she is unlikely to be given access unless she has Ms Wormwood's consent or she is applying on behalf Ms Wormwood.



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Demonstrating authority to act ‘on behalf of’ ...

Authority should:

- be in writing;
- be current;
- state the full name of the applicant and the name of the person given the authority to act (the representative);
- set out the scope of the authority; and
- be signed and dated by the applicant and the representative.



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Scenario 2

Tim Dahl advises that he is a lawyer requesting documents regarding the teaching service of Ms Jennifer Honey, under the FOI Act.

- Is the lawyer acting on behalf of a client? – Identifying the client may assist the agency to determine whether the information is exempt but it is not a requirement for the application.



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Lawyers demonstrating authority to act 'on behalf of' ...

- Lawyers – letter printed on letterhead and signed by the principal of the firm.
- Written agreement authorising the person to make the access application.
- In the case of a legal representative, a letter of authority setting out the nature, terms and duration (where relevant) of the legal representative's authority, which is signed by the legal representative and their client (the applicant).



Scenario 3

Jennifer Honey is seeking the school records of the 15 year old daughter of the Wormwood's, Mathilda.

- Is she applying on behalf of Mathilda?
- Children are not excluded from making an access application on their own behalf.
- What is the relevance of the views of the Wormwoods?



Considerations when an application is made 'on behalf of' the child

- If the application is on behalf of the child, the access applicant is taken to be the child.
- If application is not on behalf of the child, the applicant is seeking personal information about a third party.



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Requirement to seek the views of guardians or persons with custody and control

Section 32(3)

If the third party, or the closest relative of a dead third party, is a child who has not turned 16 and who, in the agency's opinion, does not have the capacity to appreciate the circumstances and make a mature judgment as to the nature and significance of the document, the views of the child's guardian, or the person who has custody or care and control of the child, may be obtained for the purposes of subsection (2).



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Scenario 4

John Wormwood is seeking his seven year old son's medical file.

- Is he the child's guardian or the person who has custody or care and control of the child?
- If he is the guardian, it is as if his son is the applicant.



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Proving guardianship or custody and control

Evidence that may assist the decision maker

- birth certificate which identifies the applicant as a parent;
- court orders that give the applicant care and control for the child; or
- correspondence and/or cards from government agencies, such as Centrelink, Medicare, or the Department of Human Services, that indicate the applicant has guardianship or care and control of the child.



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Is disclosure in the best interests of the child?

Section 23(4)

If a document contains personal information and the applicant, or the person to whom the information relates, is a child who has not turned 16, the agency may refuse access to the document if it is satisfied that access would not be in the best interests of the child and that the child does not have the capacity to appreciate the circumstances and make a mature judgment as to what might be in his or her best interests.



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Considering the best interests of the child

- Factors identified in the family law context include:
 - The benefit to the child of having a meaningful relationship with both parents.
 - The need to protect the child from physical or psychological harm and from being subjected to or exposed to, abuse, neglect or family violence.
 - Any views expressed by the child and any factors (such as the child's maturity or level of understanding) relevant to the weight to be given to the child's views.
 - The child's maturity, sex, lifestyle and background and other relevant characteristics of the child and of either of the child's parents.
 - If the child is an Aboriginal or Torres Strait Islander child the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture.

Family Law Act 1975 [section 60CC](#)



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Considering the best interests of the child

- ‘Best interests’ is a multi-faceted test - the wellbeing of the child, all factors that will affect the future of the child; the happiness of the child, immediate welfare as well as matters relevant to the child’s healthy development; may include safety, protection, education, health, developmental considerations, attachments and relationships.
- Conflict in the family may be relevant, the relationship between the child and the agency holding the information, and the possibility that disclosure of the information may harm the child. Where there is disharmony between the parents or potential conflict of interest between parent and child, care should be exercised in giving parents access to records that contain the child’s private and sensitive information.

[Applications by and for children](#) – Queensland Information Commissioner (note under the RTI Act (QLD))



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Seeking the child's views

- International, national and state legislation and guidelines, specifically acknowledge the right of children and young people to participate in decisions about their own lives.
- If a child objects to the release of information to their parents or guardians, that fact will not in itself be enough to justify refusal, but it may be a significant factor for the decision maker to consider. The balance to be struck is between the child's right to privacy on the one hand and on the other not creating unnecessary impediments to parents being able to effectively undertake their parental responsibilities.



Decision of interest

Re 'M' and Child and Adolescent Health Service [2009] WAICmr 16

Commissioner considered he must be satisfied that:

1. The requested documents contain personal information about a child who has not turned 16.
2. The decision-maker, at the relevant time, held the view that giving access would not be in the best interests of the child.
3. The decision-maker, at the relevant time, held the view that the child does not have the capacity to appreciate the circumstances and make a mature judgment as to what might be in her best interests.
4. The views of the decision-maker on the above issues were held on reasonable grounds.



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Other decisions

- *Re 'C' and Department for Child Protection* [2011] WAICmr 11
- *Re W and Child and Adolescent Health Service* [2013] WAICmr 4
- *Re X and Y and Child and Adolescent Health Service* [2013] WAICmr 5
- *Re I and Legal Aid Commission of Western Australia* [2009] WAICmr 7



Scenario 5

- Mr Wormwood's family is seeking the medical records of his deceased father. Mr Wormwood is the executor of his father's estate.
- Not an application 'on behalf of' under section 98.



Considering requests for information about deceased people

- Clause 3(1) of Schedule 1 - information is exempt if its disclosure would reveal personal information about an individual (whether living or dead).
- Consider the relevant limitations on the exemption:
 - clause 3(5) matter is not exempt under clause 3(1) if the applicant provides evidence that the individual concerned consents; and
 - clause 3(6) information is not exempt under clause 3(1) if its disclosure, would on balance, be in the public interest.



Considering requests for information about deceased people

- Clause 3(5) does not provided that the deceased person's relative or a guardian can consent to disclosure on their behalf - consent of the 'closest relative' or the guardian may be relevant in consider clause 3(6).
- Clause 3(6) – the public interest factors against disclosure of the personal information would include the strong public interest in protecting the privacy of the third party.



Seeking the views of the ‘closest relative’

- If considering disclosure of personal information of a deceased person – section 32(2)(b) - must take such steps as are reasonably practicable to seek the views of the deceased person’s ‘closest relative’.
- The ‘closest relative’ - see definition of ‘nearest relative’ in the *Guardianship and Administration Act* as a useful guide for the decision maker. A couple of cases that consider views of the closest relative and how those views may be relevant to the decision maker are: [Re "U" and Department of Health \[2010\] WAICmr 3](#) – see in particular [40 – 76] and [Re WATMORE and WA Country Health Service - Great Southern \[2012\] WAICmr 29](#) from [69].



Scenario 6

- Ms Trunchbell, Secretary of the Prevention of Cruelty to Guinea Pigs (**the PCGS**), requests a copy of a report into an agency's small pet adoption program.
- Does it matter if the application is 'on behalf of' the PCCS?



How is 'on behalf' relevant

- If the representative is applying for the applicant's personal information.
- The applicant is responsible for the fee and the charges.
- When an organisation is involved – what happens if the 'representative' leaves the organisation.



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Summary

- Be clear whether the person you are dealing with is a 'representative' or the applicant.
- If you are dealing with personal information, don't forget section 29.
- The FOI Act and the Commissioner's decisions can help.



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