



## Dealing with personal information about an officer of an agency - FOI process guide

Personal information about an officer of an agency may or may not be exempt under the *Freedom of Information Act 1992* (**the FOI Act**).

Under [clause 3\(1\)](#) of Schedule 1 to the FOI Act, information is exempt if its disclosure would reveal personal information about an individual. On its face, personal information about an officer of an agency is exempt under clause 3(1). However, the exemption is subject to a number of limitations, which must be considered.

### **'Prescribed details' relating to an officer of an agency**

Under clause 3(3) of Schedule 1 to the FOI Act, information is not exempt under clause 3(1) merely because its disclosure would reveal 'prescribed details' relating to an officer or former officer of an agency.

[Regulation 9\(1\)](#) of the *Freedom of Information Regulations 1993* (**the FOI Regulations**) provides that the following are prescribed details for the purposes of clause 3(3):

- (a) *the person's name;*
- (b) *any qualifications held by the person relevant to the person's position in the agency;*
- (c) *the position held by the person in the agency;*
- (d) *the functions and duties of the person, as described in any job description document for the position held by the person; or*
- (e) *anything done by the person in the course of performing or purporting to perform the person's functions or duties as an officer as described in any job description document for the position held by the person.*

In *I v Department of Agriculture and Food* [\[No 2\] \[2016\] WASC 272](#) the Supreme Court decided that the limitation on the exemption in clause 3(3) applies only to personal information that consists of the prescribed details of a person who is or has been an officer of the agency to which an access application is made and that such information is not exempt under clause 3(1).<sup>1</sup>

Nonetheless, when an agency is dealing with an access application that includes documents containing personal information about an officer of another agency and that information is of the kind set out in Regulation 9(1), the agency must still consider whether any of the other limits on the exemption in clause 3 apply including whether disclosure would, on balance, be in the public interest (see [clause 3\(6\)](#)).

The Information Commissioner considers that there is a strong public interest in disclosing information of the type set out in regulation 9(1). The Commissioner is of the view that the public interest in public officers being accountable for the performance of

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<sup>1</sup> The Information Commissioner is bound by this decision.

their functions or duties as an officer will usually outweigh the public interest in the protection of the personal privacy of the officer when it relates to information of the type set out in regulation 9(1).

Agencies should note that information that is not exempt under clause 3(1) may be exempt for other reasons.

### **Seeking the views of agency officers**

Under [section 32](#) of the FOI Act an agency is not to give access to a document that contains personal information about an individual who is not the applicant (**the third party**), unless the agency has taken such steps as are reasonably practicable to obtain the views of the third party about whether the document contains information that is exempt under clause 3.

This requirement applies when an agency intends to disclose personal information about an officer, including prescribed details relating to that officer.

Officers, as third parties, have the right to provide their views as to whether their personal information should be released and whether the information is exempt. If a third party considers that his or her personal information is exempt, the agency may still decide that the matter is not exempt and that the information should be disclosed. In those circumstances the agency is required by [section 34](#) of the FOI Act to give the third party written notice of that decision without delay and to defer giving the applicant access to the information until the third party has had an opportunity to exercise his or her rights of internal and external review.

### **Applying to the Commissioner for a waiver of a requirement to consult officers of agencies**

If an application would involve consulting a large number of officers of agencies, it is open to the agency to apply to the Information Commissioner under section 35(1) of the FOI Act for approval to make a decision on access without first consulting officers of agencies. The Information Commissioner may give that approval if he considers it would be unreasonable to require the views of those officers to be obtained, having regard to the number of third parties that would have to be consulted, and the document does not contain matter that is exempt under clause 3, for example, because it is merely prescribed details. Whilst this mechanism should generally be considered a last resort it may be an appropriate course of action in exceptional circumstances.

**TIP:** Some access applicants may not want personal information about officers of an agency. It is often appropriate to discuss narrowing the scope of an access application with the applicant to exclude personal information about agency officers. If personal information is not within the scope of the application and can be deleted from the requested documents then consultation may not be necessary.

This office encourages agencies to engage with applicants to clarify what information the applicant is seeking and whether certain kinds of information can be excluded from the scope of an access application.

**Office of the Information Commissioner**

Phone: (08) 6551 7888

Freecall (WA country): 1800 621 244

Fax: (08) 6551 7889

Email: [info@foi.wa.gov.au](mailto:info@foi.wa.gov.au)

Web: [www.oic.wa.gov.au](http://www.oic.wa.gov.au)

Address: Albert Facey House, 469 Wellington Street, Perth WA 6000