



Freedom of Information Newsletter

Number 29 – November 2020

From the Information Commissioner

At the end of September, I submitted my 2019/2020 [Annual Report](#) to Parliament. The report includes statistical data provided by WA State and local government agencies that provides a picture on the operation of the FOI Act throughout the year. In 2019/2020 there were 4.5% less access applications received by all agencies in comparison with 2018/2019 (18,392 down from 19,258). The decrease is almost entirely attributed to a decrease in applications made to State Government agencies (excluding Health and Police). I am pleased to see the continuing trend of a high proportion of access applicants receiving access in some form (85.2%).

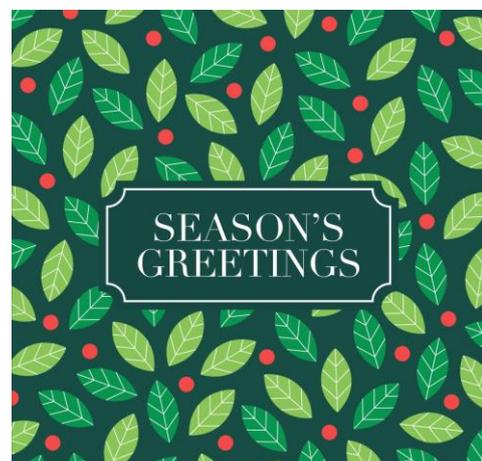
Last month, together with the members of the Association of Information Access Commissioners, my office acknowledged and celebrated *International Access to Information Day (IAID)* in recognition of the United Nations declaration that 28 September is the *International Day for Universal Access to Information*. IAID will be held on 28 September every year and recognises the community's right to access government-held information. This year the theme for IAID was *Building trust through transparency*. To mark IAID, I wrote an opinion piece for the *West Australian* published on that day; entitled "[Information Can Save Lives](#)". During the same week my office hosted three webinars, which are described further below.

In the month of October, I appeared at Parliament before the Public Administration Committee and at the Budget Estimates hearing. Information about the report of the Public Administration Committee is included later in this newsletter. Also in October, I had an article published in the Law Society of WA's magazine 'Brief' on "The Accountability Agencies at Albert Facey House", which can be viewed <[here](#)>, (extract from *Brief*, Volume 47, Number 7, October 2020 from page 20).

As we approach the end of this challenging year, I would like to acknowledge the continuing work of agency FOI officers in furthering the objects of the FOI Act. Providing timely and appropriate access to documents can be hard work but it is important work.

On behalf of myself and my office, we wish you a very happy holiday season and a peaceful and prosperous New Year.

Catherine Fletcher
Information Commissioner



World of FOI – International Access to Information Day

In October 2019, the United Nations General Assembly proclaimed 28 September as the International Day for Universal Access to Information.

This global event, which is also celebrated as Right to Know Day, recognises the community's right to access information.

In Australia, the celebration of International Access to Information Day (IAID) is designed to raise awareness of everyone's right of access to government-held information; and the public sector's responsibility to provide access to information.

The Australia and New Zealand Information Access Commissioners and Ombudsmen joined together to promote and uphold information access rights, by issuing a joint media statement and cross promoting events held in the different jurisdictions.

That joint statement is available [<here>](#).

The joint statement was published in the *PS News* and also communicated to departments, SES organisations, non-SES organisations, local and regional governments, government trading enterprises and public universities via the CEO Gateway.

The *PS News* article is available [<here>](#).

IAID webinars

As part of the IAID celebrations, the Office of the Information Commissioner held three online seminars to promote and discuss information access and rights under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) between 29 September and 1 October (inclusive), as follows:

- **Accessing government documents in WA** - This session was provided as an opportunity for advocates seeking to understand how best to use the FOI Act to access government information for their clients and included tips for making an effective FOI application.
- **Information Access and Local Government in WA** - This session featured a panel discussion between Catherine Fletcher, the WA Information Commissioner; Ian Cowie, CEO of the City of Gosnells; and Michelle Reynolds, CEO of the City of Perth about the importance, role and challenges of information access in Local Government.
- **Comparing the 'push' and 'pull' approaches of FOI and RTI legislation** - This session featured a discussion between Catherine Fletcher, the WA Information Commissioner; Rachael Rangihaeata, Queensland Information Commissioner; and Louisa Lynch, Queensland Right to Information Commissioner about 'push' and 'pull' models of FOI and Right to Information (RTI) legislation.

If you would like to listen to a recording of any of these sessions, they will be available during December 2020. Email advice_and_awareness@foi.wa.gov.au to request a link to the recordings.

Other resources about International Access to Information Day can be found on the UNESCO [website](#) including many of the webinars commemorating International Day for Universal Access to Information 2020. An interesting UNESCO panel discussion entitled “Access to Information – Saving lives, Building Trust, Bringing Hope!” is also available on YouTube, which you can access [here](#).

Did you know? Applicants are not required to use an agency application form to make valid FOI access application

Under [section 12](#) of the FOI Act, an FOI access application has to:

- be in writing;
- give enough information to enable the requested documents to be identified;
- give an Australian address to which notices can be sent; and
- be lodged at the agency with the appropriate fee.

A completed agency FOI application form is not a requirement under section 12. However, many agencies use a form to help an applicant to provide the information that is necessary to make a valid application, and to assist the agency to deal with the application efficiently. Many applicants appreciate the guidance that a form provides. However, agencies should be careful to avoid requiring a completed form as a test for whether an application is valid under the FOI Act.

Agency news – Online FOI Access Application Form

An [online FOI access application form](#) is now available on [WA.gov.au](#) to allow members of the public to submit their access application to a number of agencies using the online form. Currently the online form can be used to submit an FOI access application to any of a number of agencies that have migrated their website to the WA.gov.au platform.

While applicants cannot use the online form to send an application to an agency not listed with the form, information is available on the form webpage about how and where to send an FOI access application to agencies that are not listed on the form.

Consistent with the information that the OIC generally provides to members of the public who are seeking access to documents, the webpage accompanying the form encourages applicants to contact the relevant agency before making an access application. This gives the agency the opportunity to assist the person to access the information they may be seeking without having to submit a formal access application where it is appropriate.

Staying up-to-date with the latest version of the FOI Act

The most reliable way of staying up to date with the latest version of the FOI Act is by referring to the most current consolidated version of the Act available online at https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a290.html, as it includes amendments made to the Act.

If you are using or referring to a hard copy reprint of the FOI Act, it will not include amendments made after the date of the reprint unless you manually add them. (Note: a reprint of legislation is an authorised consolidation of legislation printed by the Government Printer under the authority of the *Reprints Act 1984* . It incorporates all

amendments in operation at the date shown on the reprint. Any amending provisions not yet in force appear in the notes area at the end of the reprint: see <https://www.legislation.wa.gov.au/legislation/statutes.nsf/faq.html#rss>).

The FOI Act was last reprinted on 11 November 2016 and there have been amendments to the FOI Act since that time.

The Acts that have amended the FOI Act since 11 November 2016 are:

- *Local Government Legislation Amendment Act 2016* - Pt. 3 Div. 16 - 26 of 2016; and
- *High Risk Serious Offenders Act 2020* - Pt. 9 Div. 3 - 29 of 2020.

Information about how to be notified of changes to existing legislation is available [<here>](#).

Agency news – Christmas and FOI timeframes

A reminder to agencies that the 'permitted period' for dealing with an access application is not extended simply because an agency has a Christmas shutdown.

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.

Refer to our guide, "[Calculating time and days](#)" available on our website, to assist you to calculate timeframes under the FOI Act. Remember that some timeframes may be extended by agreement between an agency and the access applicant.

OIC office hours over Christmas

This year the OIC will be closed 29-31 December 2020 (inclusive). The office will reopen on Monday 4 January 2021.

Incoming mail will continue to be monitored between Christmas and New Year to manage time sensitive matters.

Standing Committee on Public Administration - Report No 34 - Consultation with Statutory Office Holders

The Legislative Council Standing Committee on Public Administration (**the Committee**) is required by paragraph 5.3(b) of its terms of reference to consult regularly with:

- the Parliamentary Commissioner for Administrative Investigations (Ombudsman);
- the Public Sector Commissioner;
- the Information Commissioner;
- the Inspector of Custodial Services; and
- any similar officer.

In October 2020, the Committee held public hearings with the Information Commissioner, the Inspector of Custodial Services, the Ombudsman and the Public Sector Commissioner. The full report outlining those consultations, "Report 34 – Standing Committee on Public Administration, Consultation with Statutory Office Holders", is available [<here>](#).

The report outlines the consultation with each statutory officer and includes a number of recommendations which relate to the Office of the Information Commissioner and/or the operation of the FOI Act. Those recommendations are:

RECOMMENDATION 2	Page 18
The Information Commissioner detail in the External Review Procedure the circumstances in which the Office of the Information Commissioner would consider an exchange of submissions to be appropriate.	

RECOMMENDATION 3	Page 18
The Office of the Information Commissioner develop guidelines to assist agencies in developing submissions that are able to be shared.	

RECOMMENDATION 4	Page 20
The Attorney General undertake a review of the <i>Freedom of Information Act 1992</i> , with public consultation, with a report to be tabled in the Parliament of Western Australia before the end of 2023.	

RECOMMENDATION 5	Page 21
The review of the <i>Freedom of Information Act 1992</i> specifically consider the Information Commissioner's recommendations regarding private contractors who provide public patient services.	

Recent decisions of the Information Commissioner

Re Deturt and Department of Mines, Industry Regulation and Safety [\[2020\] WAICmr 10 \(PDF\)](#)

The complainant sought access to certain individual house inspection compliance audit reports prepared by the agency. The agency gave the complainant access to the reports, deleting the names of the builders on the ground they were exempt under clause 3(1) of Schedule 1 to the FOI Act. The deleted information included the names of individuals as well as the names of building companies.

The Information Commissioner found that the names of individuals were exempt under clause 3(1). The Commissioner considered that the names of building companies generally is not personal information, as defined in the FOI Act, and was not exempt under clause 3(1). However, the Commissioner decided that information was instead exempt under clause 4(3) of Schedule 1 to the FOI Act.

The Commissioner accepted that disclosure of the names of the building companies would reveal information about the business, professional, commercial or financial affairs of a person and that its disclosure could reasonably be expected to have an adverse effect on those affairs. In considering whether disclosure of that information would, on balance, be in the public interest pursuant to clause 4(7), the Commissioner noted that the objects of the FOI Act are to make the bodies that are responsible for State and local government more accountable to the public, whereas the complainant's submissions were more about the accountability of the builders. The Commissioner considered that the information to which the complainant had been given access

satisfied the public interest in the accountability of the agency and did not consider that disclosure of the names of the builders would further that public interest.

The Commissioner varied the agency's decision.

***Re 'Y' and Department of Education* [\[2020\] WAICmr 11 \(PDF\)](#)**

The complainant sought access to various documents relating to the disability funding allocation for the complainant's child over a specific period of time. The disputed information consisted of the names of officers of the agency deleted from two documents that contained salary details of those officers. The agency claimed the disputed information was exempt under clause 3(1) of Schedule 1 to the FOI Act.

Having regard to the context of the disputed information and the details in the disputed documents already disclosed, the Commissioner considered that disclosure of the disputed information would reveal more than prescribed details and that the limit on the exemption in clause 3(3) did not apply. In balancing the competing public interests, the Commissioner was of the view that the public interests favouring disclosure were not sufficient to outweigh the public interest in the protection of personal privacy of the officers. Accordingly, the Commissioner found that the disputed information was exempt under clause 3(1).

The complainant also claimed that certain documents had not been included in the documents released by the agency. The Commissioner was satisfied that the agency had taken all reasonable steps to locate the further documents and that they either did not exist or could not be found. Therefore, the Commissioner found that the agency's decision to, in effect, refuse the complainant access to the further documents under section 26 of the FOI Act was justified.

The Commissioner confirmed the agency's decision.

***Re 'Z' and the City of Subiaco* [\[2020\] WAICmr 12 \(PDF\)](#)**

The complainant sought external review of the agency's decision to give access to personal information about the complainant contained in a document. The requested document related to allegations about the conduct of local government councillors at the agency. The agency decided that the information about the complainant was prescribed details, as set out in clause 3(3) of Schedule 1 to the FOI Act, and therefore not exempt under clause 3(1).

The Commissioner considered that disclosure of the disputed information would reveal more than prescribed details and that the limit on the exemption in clause 3(3) did not apply. In considering the limit on exemption in clause 3(6), the Commissioner was not persuaded that the public interest in disclosing the personal information about the complainant outweighed the public interest in protecting the privacy of the complainant. Accordingly, the Commissioner found that the disputed information was exempt under clause 3(1) and set aside the agency's decision.

Re 'A' and the City of Subiaco [\[2020\] WAICmr 13 \(PDF\)](#)

The Commissioner's decision in this matter is substantially the same as described in *Re 'Z' and the City of Subiaco* [2020] WAICmr 12 above.

OIC training in 2021

During the second half of 2020 the OIC has delivered the FOI Coordinators Workshops and Decision Writing Workshops as a series of meetings over Zoom. We are currently reviewing the most effective way to provide training in 2021.

Further information relating to training in 2021 will be available on our website early in the new year.

Subscription and feedback

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Click [<here>](#) to provide your feedback or suggestions for the FOI Newsletter.

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Acknowledgement of Country

The Office of the Information Commissioner acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders both past and present.