

Seeking the views of third parties

Wesley Day and Vivien Akerstrom, Office of the
Information Commissioner



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When do I need to seek the views of third parties?

When the agency decides to give access to a document that contains:

- personal information about a third party (section 32)
- business, professional, commercial or financial information about a third party (section 33)

Re Tallentire and Department of Agriculture and Food and Others [\[2015\] WAICmr 2](#)



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Section 32

The agency is not to give access to a document that contains *personal information about an individual (the third party)* unless the agency has taken such steps as are reasonably practicable to obtain the views of —

(a) the third party; or

(b) if the third party is dead, his or her closest relative,

as to whether the document contains matter that is exempt matter under clause 3 of Schedule 1.

I v Department of Agriculture and Food [\[No 2\] \[2016\] WASC 272](#)

Re J and Police Force of Western Australia [\[2008\] WAICmr 5](#)



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Section 33

The agency is not to give access to a document that contains

- a) information concerning the trade secrets of; or
- b) information (other than trade secrets) that has a commercial value to;
or
- c) any other information concerning the business, professional,
commercial or financial affairs of,

a third party who is not the applicant, unless the agency has taken such steps as are reasonably practicable to obtain the views of the third party as to whether the document contains matter that is exempt matter under clause 4 of Schedule 1.



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Is it always necessary to seek the views of the third party?

No – you do not need to seek the views of the third party if you:

- do not propose to give access

or

- propose to delete the third party information because it is exempt or outside the scope of the application



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What is the procedure for consultation?

- Identify the third parties whose information you propose to disclose
- Take steps that are reasonably practicable to obtain the views of the third parties



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How do I consult with third parties?

The form of consultation will depend on the circumstances:

- a telephone call
- a face to face meeting may be more appropriate
- a formal letter
- an email
- send a copy of the document or documents where appropriate or necessary



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What steps do I take when consulting third parties?

- Inform the third party that you are proposing to disclose documents that contain personal or business information about the third party and request the third party's views
- Highlight any exempt matter that will be deleted
- Specify a time frame for the third party to respond
(you still only have a 45 day permitted period to deal with the access application)
- Specify the consequences of not responding in time
(if no response is received we will write a notice of decision without the benefit of your view, which will likely result in giving access to the document)



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What happens after I have sought the views of a third party?

Section 34 of the FOI Act describes the procedure.

If you do not receive a response from the third party:

- Make a decision

If you do receive a response from the third party:

- Consider the third party's views and **make your own decision** in accordance with your obligations under the FOI Act



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To whom do I issue my decision?

- The access applicant AND the third party receive a Notice of Decision, where you propose to give access to the third party's personal or business information
- Both the access applicant AND the third party have 30 days to exercise their rights of review



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What are the procedures following the decision

- If the third party **does *not* seek** review within the review period – 30 days – release the documents to the applicant
- If the third party **does seek** review, do not release the documents until the review rights have expired (potentially internal review, external review and court appeals on a question of law)



Can the requirement to consult be waived?

Section 35 of the FOI Act provides that the Information Commissioner, **may** in limited circumstances, waive the requirement to consult.



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Interesting References

- *Re Jewish Community Council of Western Australia Incorporated and Curtin University of Technology and 'T'* [\[2017\] WAICmr 15](#) see [27]- [28]
- *Re Post Newspapers Pty Ltd and Town of Cottesloe* [\[2013\] WAICmr 27](#) see [38] – [41]
- *Re Kobelke and Minister for Planning* [\[1994\] WAICmr 5](#) see [6]- [7]

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OIC publications for third parties

- [Can others access information about me or my business?](#)
- [What is personal information?](#)
- [The public interest](#)
- [Review of agency decisions](#)
- [Third parties and their rights - guide for the public](#)



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OIC publications for agencies

- [Consulting third parties](#)
- [What if there are many third parties to consult?](#)
- [Flowchart - Dealing with an FOI application](#)
- [Calculating time and days guide](#)
- [Dealing with personal information about an officer of an agency](#)
- [Dealing with requests for documents related to an 'exempt agency'](#)
- [FOI Coordinators Manual](#)



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