

# Skills for effective communication in the FOI process

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# Overview

## Tips and strategies for:

- Effective communication with access applicants and third parties
- Negotiating with access applicants
- Writing a notice of decision



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# Some potential challenges

- Range of roles
- Dealing with high conflict behaviour
- Managing emotions – yours and theirs
- Attachment to the dispute
- Our natural inclinations
- Cultural considerations



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# Background to an application

- Recognise that usually there is a background to the request, for example, a workplace grievance, a neighbourhood dispute, a political or media interest
- Although the reasons why a person seeks access to documents is not a relevant consideration under the FOI Act, they can assist an agency to help narrow the scope or otherwise focus the request
- Clarity about the sorts of documents the agency holds and its record keeping system or practices. Members of the public may not have this knowledge
- The applicant may be seeking answers to questions and may not be able to get what they want



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# Active listening skills

- Listen to what is being said and show that you are listening
- Be genuinely interested in the response
- Non-verbal – eye contact, nodding
- Open ended questions
- Paraphrase or reframe responses
- Silence



# Managing expectations and giving bad news

- Manage expectations – be clear about what you can and can't do under the FOI Act and the process
- Your job will likely involve you giving people bad or unwelcome news
- Explain options and consequences of choices
- People want to be satisfied that they have been heard and their request has been dealt with fairly



# Some key elements of a successful encounter with an access applicant

- Build rapport and trust and seek to understand
  - *The biggest communication problem is we do not listen to understand. We listen to reply* (Anonymous)
- Have a clear understanding of the applicant's requirements
- Consider release outside FOI at earliest opportunity
- Be courteous and do what you say you'll do, especially with regard to timing



# Rules of thumb

- Treat people with respect
- Maintain neutrality, and stay calm
- Remain solution focused – separate the person from the problem
- Adopt a constructive, cooperative problem solving approach
- Act with integrity, build trust



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# Email communications

- Advantages: quick, convenient, permanent record
- Potential disadvantages:
  - tone of an email can be misinterpreted
  - can be less flexible than telephone or face to face communication
- Consider phone call first, follow up with an email
- Draft email and defer sending



# Other email tips

- Key message in first paragraph including time limits, options and consequences – highlight time limits especially when writing to third parties
- Use dot points if possible
- Consider subject heading – provide overview of content of email including any relevant time limits
- Use specific timeframes and consequences
- Consider providing links to or copies of OIC publications that can help explain issues



# Negotiating with applicants

- Many opportunities for negotiating when dealing with an FOI application
- Should be in good faith – section 4 duties to assist
- Provide actual assistance
- Positive relationships with FOI applicants can significantly enhance an agency's experience and lead to better overall outcomes for the applicant.



# Opportunities for negotiation

- If the documents are not overly sensitive or voluminous, consider options such as administrative access.
- Try to narrow the scope of the application or consider options such as providing a summary.
- If the documents contain third party information, clarify scope with the applicant to see if they want the third party information as this may avoid the need for third party consultation.
- If the applicant is willing to negotiate in good faith, engaging with them early in the process can lay the foundations for productive negotiations.



# Tips when negotiating

- In many cases you won't know how an applicant or third party will react to negotiation options until you engage with them
- Exercise your judgment in assessing the opportunities, benefits and priority of negotiating
- Don't spend 44 days negotiating – manage your time
- Negotiated solutions can include a number of flexible options



# Tips when writing a Notice of decision

- Use plain English as far as possible.
- Consider ‘How would I feel if I received this decision?’
- Be careful about using templates and ‘cutting and pasting’ from previous decisions
- Ask a colleague to read your decision before you send it
- Refer to previous decisions of the Information Commissioner or OIC publications.



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# Tips when writing a Notice of decision cont'd...

- Be clear about the scope of the access application – unless it is very lengthy, quote the scope directly instead of paraphrasing
- Outline the searches conducted for the requested documents (unless the applicant requested specific documents that have all been located)
- When explaining the relevant provisions of the FOI Act, consider your audience and the complexity of the issues when deciding how much detail to include in your explanation
- In applying the law to the facts, your decision should explain all of the steps in your reasoning process that led to your decision



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# Self-care

- Being an FOI practitioner can be very challenging and stressful
- Healthy strategies for managing stress
  - ❖ Debrief with a colleague after a difficult phone call
  - ❖ Go for a walk
  - ❖ Breathe (mindfulness apps)
  - ❖ Employee Assistance Program
- Look after yourself



# Further reading

- Queensland Information Commissioner's website -  
<https://www.oic.qld.gov.au/>
  - Managing High Conflict Behaviour recorded webinar and presentation  
[https://www.oic.qld.gov.au/\\_\\_data/assets/pdf\\_file/0017/20708/Managing-High-Conflict-Behaviour-presentation.pdf](https://www.oic.qld.gov.au/__data/assets/pdf_file/0017/20708/Managing-High-Conflict-Behaviour-presentation.pdf)
- Good Practice Guide to Dealing with Challenging Behaviour (Victorian Ombudsman May 2018)  
<https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports/dealing-with-challenging-behaviour>



# Further reading cont'd

- Bill Eddy - High Conflict Institute

<https://www.highconflictinstitute.com/>

– Article: Responding to Hostile Email

<https://www.highconflictinstitute.com/hci-articles/2018/3/11/responding-to-hostile-mail-biff>

– Article: Calming Upset People with E.A.R.

<https://www.highconflictinstitute.com/hci-articles/2018/3/11/calming-upset-people-with-ear>



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# Questions



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# FOI in WA Conference

Building trust



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