



Freedom of Information Newsletter

Number 10 – December 2016

From the Information Commissioner – Happy 250th Anniversary

2 December 2016 marks the 250th anniversary of the passage of the world's first Freedom of Information legislation in Sweden. To mark this anniversary, Australian and New Zealand independent statutory officers administering freedom of information legislation jointly issued a media statement, which is available at:

http://foi.wa.gov.au/materials/FOI250/Joint_press_release_250_years_of_FOI.pdf.

Access to information and participation in government decision making contributes to the transparency of government. Transparent governments are accountable governments. Accountable governments make better decisions and enjoy greater public trust. This is the key contribution freedom of information continues to make to our modern democratic governments.

World of FOI – from the world's first Freedom of Information legislation

The first paragraph of 'His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press' considers the 'great advances that flow to the public from a lawful freedom of writing and of the press' including:

an unrestricted mutual enlightenment in various useful subjects not only promotes the development and dissemination of sciences and useful crafts but also offers greater opportunities to each of Our loyal subjects to gain improved knowledge and appreciation of a wisely ordered system of government ...

Note the parallels with the speech of former Western Australian Minister for Justice, David Smith, when he introduced the WA FOI Bill in 1991:

Freedom of Information legislation represents a fundamental reform of the relationship between the State and local governments and the communities they serve. It enshrines in legislation rights which are at the very heart of democratic processes.

Did you know? – FOI deadlines don't automatically extend for Christmas

The FOI Act includes a number of time frames within which decisions and applications for review need to be made. Those time frames are not limited to working days. Public holidays and office shut down days are included in the calculation of the time in which a decision or application for review can be made. 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. To assist you to calculate timeframes under the FOI Act, this office has created a guide, [Calculating time and days](#), which is available on our website. Some timeframes may be extended by agreement between an agency and the access applicant.

Agency news – Revised publication – Dealing with personal information about officers of an agency

This office has published a new guide [Dealing with personal information about an officer of an agency](#) which replaces the guide *Consulting Officers of an Agency*. The new guide provides some

guidance to agencies in relation to the disclosure of prescribed details relating to officers of an agency in light of the recent decision of the Supreme Court in *I-v- Department of Agriculture and Food* [2016] WASC 272 (see page 3 of this newsletter).

Good news story – Thinking outside the box

Our last newsletter asked for good news stories about approaches that agencies have taken in response to a request for information to achieve good outcomes for both the agency and the applicant. These stories are an opportunity to share ideas that may assist other people dealing with FOI. Here is one such story.

An FOI unit received an access application which sought documents related to a particular officer's travel details including each flight taken, date of the flight, destination, people on the flight, cost associated, food and beverages consumed and the like. The FOI Unit successfully negotiated with the applicant to reduce the timeframe of the request and the applicant agreed to receive the travel information in a spreadsheet format. This eliminated the need to conduct further (and extensive) searches for documents and provided the applicant with the information they were seeking.

Agencies are not required to produce new documents in response to an access application. However, if the applicant and the agency agree, sometimes producing a new document outside of the FOI Act may be the most efficient and effective way to give effect to the objects of the FOI Act.

OIC visit to the Kimberley – 28 November to 1 December 2016

The Information Commissioner visited Broome and Kununurra this week to provide FOI training and briefings to agency officers in the regions. The Shires of Broome and Wyndham/East Kimberley hosted the Commissioner allowing our office to offer FOI briefings to public sector officers based in the Kimberley. These briefings were well attended. The Commissioner appreciates the hospitality of both Shires. The hospitals in both Broome and Kununurra also hosted training and briefings for their staff. If you would like information about the potential for briefings or training in your area please contact advice_and_awareness@foi.wa.gov.au.

Recent decisions of the Information Commissioner

***Re Shuttleworth and Town of Victoria Park* [2016] WAICmr 13 (PDF)**

The complainant sought access to a copy of a statutory declaration that had been executed by a third party and provided to the agency for the purpose of verifying that certain work had been carried out on a block prior to its subdivision and sale as a strata titled block. The agency gave the complainant an edited copy of the document, deleting the name, address, occupation and signature of the third party. The Commissioner found that the third party's signature was exempt under clause 3(1). However, in the circumstances of the particular complaint, the Commissioner decided that disclosure of the name, address and occupation of the third party would, on balance, be in the public interest and he found that information was not exempt under clause 3(1).

***Re Park and City of Nedlands* [2016] WAICmr 14 (PDF)**

The complainant sought access to a copy of the agency's draft Local Planning Strategy submitted to the Western Australian Planning Commission. The agency refused access to that document on the basis that it was exempt under clause 6(1) of Schedule 1 to the FOI Act. While the Commissioner accepted that disclosure of documents may not be in the public interest when the relevant deliberations in an agency are ongoing or have not been completed, he considered that is only the case when disclosure will undermine, hamper or adversely affect those continuing or future deliberations.

The Commissioner was not persuaded on the material before him that disclosure of the disputed document would, on balance, be contrary to the public interest and he found that it was not exempt under clause 6(1).

Re Jones and Department of Transport [\[2016\] WAICmr 15 \(PDF\)](#)

The agency gave the complainant access to edited copies of certain documents related to an investigation of a grievance lodged by the complainant. The agency claimed that the deleted information was exempt under clause 3(1) of Schedule 1 to the FOI Act. It also refused the complainant access to additional documents under section 26 of the FOI Act on the basis that those documents cannot be found or do not exist. The Commissioner found that the deleted information was exempt under clause 3(1) and that the agency's decision under section 26 of the FOI Act was justified.

Recent decisions by the Supreme Court

I-v- Department of Agriculture and Food [\[2016\] WASC 272](#)

A third party appealed a decision of the Commissioner that certain information was not exempt under clause 3(1) of Schedule 1 to the FOI Act. The Supreme Court accepted that the limitation on the exemption in clause 3(3) applies 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). However, the Court decided that the limitation in clause 3(3) does not apply to the personal information about an officer of another agency.

The appeal was upheld.

Morris -v- Information Commissioner at WA Office [\[2016\] WASC 336](#)

A complainant appealed the Commissioner's decision to stop dealing with her complaint under section 67(1)(b) of the FOI Act on the basis that the complaint was lacking in substance. The Court noted that its jurisdiction is limited to determining questions of law; it cannot conduct a review of the merits of the Commissioner's decision, which was what the complainant in effect sought. The Court was of the view that the complainant's appeal was not on a question of law and dismissed the appeal.

FOI training news – New dates for 2017 available now

Upcoming training dates for agencies can be found [<HERE>](#).

The **FOI Coordinators Workshop** introduces participants to the objects and principles of the FOI Act and the major features of the legislation. Topics include the role of decision-makers; FOI applications; exemptions; consultation with third parties; charges; notices of decision and review; amendment of records; publication of information; statistics and reporting.

The **Decision Writing Workshop** is designed to enhance decision-makers' skills and confidence in writing a notice of decision that complies with the *Freedom of Information Act 1992 (WA)*. Participants will be expected to already have a basic understanding of the requirements of the FOI Act.

Subscription and feedback

Send your [feedback or suggestions](#) for the FOI Newsletter.

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