



Freedom of Information Newsletter

Number 17 – January 2018

From the Acting Information Commissioner, Su Lloyd

Recently I have noticed an improvement in the quality of agency engagement with access applicants. In many cases, agencies are taking great care to confer with access applicants and clarify the scope of an access application, before commencing their searches for relevant documents.

Many agencies are also going to some trouble to negotiate, sometimes at length, with applicants to explain what documents might be available.

This development can only be a positive for the administration of the FOI Act, in that early clarification of the scope will make for more effective and targeted search processes and more efficient processing of applications. Finding out at an early stage whether the access applicant seeks certain personal information may reduce the need for consultation, and communication of this kind establishes and builds trust between the applicant and the agency, but more generally with the community as a whole.

It is all the more commendable that this early engagement is happening in a context of increasing pressure on FOI staff, through diminishing resources, mergers and restructures, and in some cases the loss or relocation of skilled staff.

The work of FOI coordinators is valuable and critical to upholding the lofty objects of the FOI Act – to enable the public to participate more effectively in governing the State and to make the persons and bodies that are responsible for state and local government more accountable to the public. Their work matters.

World of FOI – National Dashboard on the Utilisation of Information Access Rights for 2014-15 and 2015-16

The Australian Information Access Commissioners and Ombudsmen have released the inaugural dashboard of metrics on public use of freedom of information (FOI) access rights.

The metrics reflect the currently available data that is reasonably comparable across jurisdictions in Australia and the priorities agreed in Australia's first Open Government National Action Plan, to develop uniform metrics on public use of FOI access rights ([Commitment 3.2](#)) to promote the importance of better measuring and improving our understanding of the public's use of rights under freedom of information laws.

The metrics will enable the community to examine the performance of their local FOI laws and to advocate accordingly, as well as improving community understanding of how FOI laws work and how to access them.

View the dashboard of FOI metrics [<here>](#). Information about the scope of the metrics is available [<here>](#).

Agency news – Agency contact details for information disclosure

With the recent changes to agencies as a result of the Machinery of Government reform, it is timely to remind agencies of the obligation under section 4(a) of the FOI Act to give effect to the FOI Act in a way that assists the public to obtain access to documents. That assistance starts with a clear and readily accessible way that a person can contact an agency to inquire about the FOI process and access to information in general.

This office strongly recommends that agencies allocate a direct email address and phone number for that purpose.

Many agencies already assign a generic email address for such inquiries. For example: [foi@\[agency\].wa.gov.au](mailto:foi@[agency].wa.gov.au). Similarly, a position title and phone number that is exclusively assigned for that function should be available.

A public inquiry should not involve a complex series of searches on a website that may or may not provide that kind of contact point. Further, if a person contacts the main phone number of the agency, the person who receives that call should be able to immediately transfer the call to a relevant officer.

For your information – OIC website has moved

The Office of the Information Commissioner website has a new domain name:

<https://www.oic.wa.gov.au>.

At this stage, any links to our previous domain name will be automatically redirected to the new domain name.

However, any HTTP links to discrete files located on our website (i.e. those hardcoded by agencies) should be amended by agencies to reflect the new domain and protocol (i.e. https).

For instance, a link to <http://www.foi.wa.gov.au/subfolder/filename.xxx> will need to be changed to <https://www.oic.wa.gov.au/subfolder/filename.xxx>.

Recent decisions of the Information Commissioner

Re Cockburn Cement Limited and Department of Water and Environmental Regulation [2017] WAICmr 24 (PDF)

The complainant, a third party, sought review of the agency's decision to give access to certain documents relating to Cockburn Cement Limited, on the basis that the documents contained information that is exempt under clauses 4(1), 4(2) or 4(3) of Schedule 1 to the FOI Act. The Acting Information Commissioner (**the A/Commissioner**) found that some of the disputed information was exempt under clause 4(2) of Schedule 1 to the FOI Act. The remaining disputed information was found to be not exempt under clauses 4(1), 4(2) or 4(3). The A/Commissioner found that access to one document should be by inspection because the document was subject to copyright.

The agency's decision was varied.

Re Donovan and Curtin University of Technology [2017] WAICmr 23 (PDF)

The complainant applied to the agency for access to documents relating to a complaint against him. The A/Commissioner was not satisfied that the disputed documents would be privileged from production in legal proceedings on the ground of legal professional privilege and found that the disputed documents were not exempt under clause 7(1) of Schedule 1 to the FOI Act.

The agency's decision was set aside.

***Re Seven Network (Operations) Ltd and Public Transport Authority* [\[2017\] WAICmr 22 \(PDF\)](#)**

The complainant made six access applications to the agency for access to CCTV footage of various kinds of incidents that had occurred on the agency's train network. The agency decided to amalgamate all of the complainant's access applications and refused to deal with the amalgamated application under section 20 of the FOI Act.

The A/Commissioner was of the view that there is nothing in the FOI Act expressly dealing with whether or not an agency may amalgamate two or more access applications and considered that it was not necessary to express a conclusion as to whether the agency was entitled to amalgamate the access applications. In the A/Commissioner's view, the relevant question was whether the work involved in dealing with the totality of the complainant's access applications would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The A/Commissioner was satisfied on the information before her that the agency had taken reasonable steps to help the complainant to change its amalgamated application to reduce the amount of work needed to deal with it. The A/Commissioner was also satisfied that the work involved in dealing with the amalgamated application would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The agency's decision was confirmed.

***Re Farina and Minister for Environment* [\[2017\] WAICmr 21 \(PDF\)](#)**

The complainant applied to the Minister for Environment for access to particular documents. The then Minister refused access to some of the requested documents in full or in part on the grounds they were exempt under clauses 1(1) and 12(c) of Schedule 1 to the FOI Act. While the matter was before the Information Commissioner there was a change of government after the State Government election in March 2017. Given the change of Government, and that the Minister at the time of the complainant's access application and the application for external review was no longer the Minister, the A/Commissioner found that the requested documents are no longer documents of the agency, being the Minister. As a result, the FOI Act did not apply to the requested documents.

The former Minister's decision was set aside.

***Re Appleton and Department of Education* [\[2017\] WAICmr 20 \(PDF\)](#)**

The complainant applied to amend personal information about him contained in documents of the agency. The complainant's amendment application consisted of approximately 459 pages and requested amendment of 387 pieces of information in 82 documents. The A/Commissioner was of the view that Parliament did not envisage or intend that the amendment provisions in the FOI Act would require an agency to deal with an application for amendment of the size the complainant had made. In the circumstances of the particular case, and having regard to the objects of the FOI Act, other provisions in the FOI Act including section 20, the nature and size of the complainant's application, the work involved in the agency dealing with the totality of his amendment application which the A/Commissioner considered was mostly without merit, the A/Commissioner found that the decision of the agency not to amend information in accordance with the complainant's amendment application was justified.

The decision of the agency was confirmed.

FOI training news –2018 training dates available now

The 2018 training dates for agencies can be found [<here>](#).

There will be fewer face to face training courses offered this year, as we plan to develop and deliver more online training options for agencies. This will offer greater flexibility for agencies to access FOI training that is relevant to their needs and at a time and place that is convenient to them. Our newsletter will keep you informed as we update our training offerings.

If a session is listed as fully booked, please register for the relevant waitlist. This will give us the opportunity to contact you if there are cancellations or, if there is considerable demand, to schedule another training session.

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 FOI Act. Participants will be expected to already have a basic understanding of the requirements of the FOI Act.

Feedback and suggestions – Tell us what you think

We are interested in hearing what you would like to read about in the Newsletter. Do you have suggestions about ways we can assist you to better understand the requirements of the FOI Act? Click [<here>](#) to provide your feedback or suggestions for the FOI Newsletter and for our other Advice and Awareness services.

Subscription

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