



Freedom of Information Newsletter

Number 18 – March 2018

From the Acting Information Commissioner, Su Lloyd

This year marks the 25th anniversary of Freedom of Information in Western Australia. On 1 November 1993 the document access provisions of the *Freedom of Information Act 1992* commenced operation.

In his Second Reading Speech on 28 November 1991 in the Legislative Assembly, Hansard 7169 to 7171, the then Minister for Justice, Mr David Smith, said

Freedom of Information legislation represents a fundamental reform of the relationship between state and local governments and the communities they serve. It enshrines in legislation rights which are at the heart of the democratic processes...FOI strengthens democracy, promotes open discussion of public affairs, ensures the community is kept informed of the operations of government and opens government performance to informed and rational debate.

During recent weeks I have had the opportunity to meet with and brief the corporate executive teams of two newly merged agencies on FOI. I was very pleased to note that, in the midst of the many other issues they have to consider, both had turned their minds to adopting a pro disclosure culture within the new agencies.

This approach is likely to enhance the reputations of those agencies and further build trust in the community.

World of FOI – Information Commissioner’s Office in the United Kingdom

The UK Information Commissioner’s Office (**the ICO**) describes itself as ‘The UK’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals’. It is currently in the news regarding its investigation of the use of Facebook data as part of its ongoing investigation into the use of data analytics for political purposes. The ICO website includes interesting material about freedom of information and privacy. Click [<here>](#) for some interesting case studies related to personal information in the UK.

Did you know? – Post Review Questionnaire responses form part of the OIC KPIs

When a complaint or external review to the information Commissioner is finalised, the OIC sends the parties to the complaint a post review questionnaire (**a PRQ**). The OIC uses the results from the PRQs to report on one of the OIC Key Performance Indicators - the satisfaction of parties with the external review process. The KPIs are published in the OIC Annual Report. If you receive a PRQ, please complete and return it. The higher the response rate to the surveys, the greater the reliance that we can place on the accumulated data.

As well as using the collected data to report on a KPI, the responses assist to improve our processes. We encourage all parties to a finalised external review to complete the PRQ even if you may have completed a PRQ in an earlier external review. The Commissioner reviews all feedback.

Did you know? – The role of the Commissioner’s preliminary view

A written preliminary view is a major milestone in a complaint before the Commissioner. It is provided to the parties prior to a formal published decision, usually when conciliation to date has not been successful. Its purpose is to give the parties involved an opportunity to review the Commissioner’s understanding of the matters in dispute; identify any factual errors; and provide new and relevant information or submissions before the matter is finalised.

The preliminary view letter is addressed to the party to whom the Commissioner’s preliminary view is largely adverse, with a copy provided to the other parties (abridged if necessary to avoid disclosure of potentially exempt matter). Based on the preliminary view of the Commissioner, each party is provided the opportunity to reconsider their position and can either choose to withdraw from the matter or provide further submissions in support of their claim.

Agency news – Consultation under sections 32 and 33 of the FOI Act

Under sections 32 and 33 of the FOI Act, agencies are required to take such steps as are reasonably practicable to obtain the views of third parties before giving access to a document that contains personal, commercial, business, professional or financial information about that party. However, in cases where an agency does not propose to give access to the relevant information because the agency has formed the view that the information is exempt, consultation with third parties is not required.

If an agency does seek the views of a third party, it should make it clear to that party that the agency has already formed the view that the information should be disclosed. Invite the third party to provide persuasive arguments as to why the party considers that the information is exempt under clauses 3 or 4 of Schedule 1 the FOI Act. The consultation process should not be an open ended invitation for the third party to express a general preference about disclosure of the information. The views of a third party are not decisive of a matter. An agency should take those views into account but must make its own decision based on the information before it.

To assist third parties to understand their rights under the FOI Act, agencies may consider giving the third party a copy of the OIC guide [Third parties and their rights](#).

Recent decisions of the Information Commissioner

Re Seven Network (Operations) Limited and Public Transport Authority [2018] WAICmr 1 (PDF)

Following correspondence with the complainant to change the scope and reduce the work needed to deal with its access application for CCTV footage, the agency refused to deal with the application under section 20 of the FOI Act. The Commissioner accepted that the agency had taken reasonable steps to reduce the scope of the application. However, the Commissioner was not satisfied that the work involved in dealing with the access application would divert a substantial and unreasonable portion of the agency’s resources from its other operations. The Commissioner found that the agency was required to deal with the complainant’s access application in accordance with the FOI Act.

The agency’s decision was set aside.

Recent decision by the Supreme Court

Public Transport Authority [2018] WASC 47 (PDF)

The agency appealed the Commissioner’s decision in *Re Seven Network (Operations) Limited and Public Transport Authority [2017] WAICmr 12 (PDF)* that certain CCTV footage was not exempt under clause 3(1) of Schedule 1 to the FOI Act. The Commissioner had found that the CCTV footage was not personal information as defined in the Glossary to the FOI Act because he was not satisfied

that the identities of the individuals in the footage were apparent or could reasonably be ascertained from the footage. The Honourable Acting Justice Smith held at [72]:

The issue is whether a person's identity can reasonably be ascertained. The question to be asked is whether, on an objective assessment of all relevant circumstances when examining CCTV footage, it can reasonably be said that at least one or more persons, including the person or persons whose image(s) are shown in the CCTV footage, could have the necessary knowledge of contextual information to ascertain the identity of the individual or individuals.

The appeal was upheld.

Reminder – the 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 are automatically redirected to the new domain name.

However, any HTTP links to discrete files located on our website (i.e. those hardcoded by agencies) will only be directed to the OIC main page. Please amend links to particular OIC pages or documents on your own websites to reflect the new domain and protocol (i.e. <https://www.oic...>).

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>.

FOI training news – 2018 training dates available now

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

There are 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 and website 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

[Subscribe](#) to the FOI Newsletter and decision announcements.

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