



Freedom of Information Newsletter

Number 20 – July 2018

Appointment of Acting Information Commissioner, Catherine Fletcher

Ms Catherine Fletcher commenced as Acting Information Commissioner on 16 July 2018. Ms Fletcher has been appointed to the position for a six-month period.

Catherine Fletcher holds law degrees and a diploma in business management from the University of Western Australia. She was admitted to practice in Western Australia in 1991. For most of her career, Catherine has worked as a legal officer in the public sector at both State and Commonwealth agencies including at the (formerly named) Crown Solicitor's Office, (now known as the State Solicitor's Office), at the Commonwealth and State offices of the DPP (Director of Public Prosecutions) and at Legal Aid WA.

For a number of years Catherine also taught law and legal practice courses at the Articles Training Program (run by the Legal Practice Board) and at the Universities of Notre Dame and Western Australia. In addition to her legal work, Catherine has held numerous voluntary roles on boards and committees including the Law Society of WA, Notre Dame University, Women Lawyers of WA and several sporting bodies. Catherine has always had an active involvement in several sports including representing WA a number of times at the national amateur surfing titles held throughout Australia. She remains active in surfing, competitive water polo and recreational swimming.

Ms Fletcher takes on this role with the departure of Acting Information Commissioner, Ms Lisa Ward, who has been appointed as a magistrate of the Magistrates Court of Western Australia.

From the Acting Information Commissioner

I'm very pleased to have been appointed the Acting Information Commissioner for WA for a six-month term. Before I commenced this role, I took an oath of office to faithfully and impartially perform the functions of the Information Commissioner and related duties under section 60 of the FOI Act. That oath was administered by the Speaker of the Legislative Assembly, the Honourable Peter Watson MLA, at Parliament on 16 July 2018 at a small ceremony attended by the Speaker, the Clerk of the Legislative Assembly, Ms Kirsten Robinson, some members of my family and the Executive Officer of the OIC, Ms Michelle Fitzgerald. It was a very special occasion for me. I aim to serve the community to the best of my capabilities in accordance with the objects and responsibilities of the FOI Act and to provide effective leadership to the staff at the Office of the Information Commissioner.



World of FOI – NY Times explains how it uses FOI legislation

FOI legislation exists in jurisdictions across the world. The New York Times recently published an article explaining how its journalists use United States FOI legislation - [How Times Reporters Use the Freedom of Information Act](#).

Agency news – FOI Coordinators Manual update

We have updated the FOI Coordinators Manual to include references to recent decisions of the Information Commissioner. Hyperlinks to most decisions referenced in the manual have also been included. The updated FOI Coordinators Manual is available at:

<https://www.oic.wa.gov.au/Materials/FOI%20Coordinators%20Manual.pdf>.

If you have previously accessed the manual online, please check that you are accessing the current version (Version 2.7 (June 2018)). If not, refresh your browser. In some operating systems, this can be accomplished by pressing 'F5'.

Agency news – Annual Statistical returns

Thank you to those agencies who have completed their statistical returns for the 2017/18 financial year. Under section 111 of the FOI Act, the Information Commissioner's annual report to Parliament must include certain specified information relating to the number and nature of applications dealt with by agencies under the FOI Act during the year. Under this section, agencies have to provide the Information Commissioner with such information as required for preparing the annual report. In late June, all agencies were invited by email to complete an online statistical survey related to their FOI activity for the 2017/18 financial year.

If your agency has not completed the survey yet, please do so. If you have any questions about completing the survey, please contact the OIC.

Recent decisions of the Information Commissioner

Re 'S' and Department for Child Protection and Family Support [2018] WAICmr 2 (PDF)

This matter was remitted to the Commissioner by the Supreme Court in *S v Department for Child Protection and Family Support* [2017] WASC 305. The Acting Commissioner was required to determine whether disclosure of the disputed matter would, on balance, be in the public interest, as described in clause 3(6).

The Acting Commissioner was of the view that the public interest in protecting the privacy of third parties outweighed the public interest in disclosing personal information about third parties. On balance, the Acting Commissioner was of the opinion that it was not in the public interest for sensitive personal information about other individuals to be placed in the public domain by way of the FOI process. The Acting Commissioner found that the disputed matter was exempt under clause 3(1) of Schedule 1 to the FOI Act.

The agency's decision was confirmed.

Re Wells and Legal Profession Complaints Committee [2018] WAICmr 3 (PDF)

The complainant applied for access to documents comprising or referring to communications between the agency and other parties in relation to legal proceedings against him. The complainant alleged that the disputed documents were made in the course of or furtherance of an unlawful or improper purpose. Based on the material before her, and applying *Department of Housing and Works v Bowden* [2005] WASC 123 and *Re Duggan and Department of Agriculture and Food* [2011] WAICmr 31, the Acting Commissioner was satisfied that, on their face, the disputed documents would be privileged from production in legal proceedings on the grounds of legal professional privilege. Once the Acting Commissioner decided that particular documents are on their face the subject of legal professional privilege, then that is all that is required to establish the exemption

under clause 7(1). Accordingly, the Acting Commissioner found that the disputed documents were exempt under clause 7 of Schedule 1 to the FOI Act.

The agency's decision was confirmed.

***Re Hobday and State Solicitor's Office* [\[2018\] WAICmr 4 \(PDF\)](#)**

The agency refused access to the disputed documents on the ground that they were exempt under clause 7(1) of Schedule 1 to the FOI Act. The Acting Commissioner found that the disputed documents were exempt under clause 7 on the basis that they would be privileged from production in legal proceedings on the ground of legal professional privilege.

The agency's decision was confirmed.

***Re Wells and Legal Practice Board of Western Australia* [\[2018\] WAICmr 5 \(PDF\)](#)**

The complainant claimed that additional documents existed within the scope of his access application. The Acting Commissioner stated that when dealing with section 26 of the FOI Act, the following questions must be answered. First, whether there are reasonable grounds to believe that the additional documents exist or should exist and, second, whether the additional documents are, or should be, held by the agency. Where those questions are answered in the affirmative, the next question is whether the agency had taken all reasonable steps to find the additional documents. The Acting Commissioner was not satisfied that there were reasonable grounds to expect that additional documents exist or should exist. Further, the Acting Commissioner was satisfied that the agency had taken all reasonable steps to find the additional documents.

The agency's decision was confirmed.

***Re Goiran and Department of Health* [\[2018\] WAICmr 6 \(PDF\)](#)**

The complainant sought access to documents that included information about induced abortions carried out after 20 weeks gestation. The agency gave the complainant access to edited copies of documents with certain information deleted on the ground it was exempt under several clauses, including clause 3(1) of Schedule 1 to the FOI Act. The Acting Commissioner was satisfied that disclosure of the disputed information, when considered with the information to which access had already been given, would disclose personal information that was prima facie exempt under clause 3(1). The Acting Commissioner did not consider that the public interest in disclosing that personal information outweighs the privacy of those individuals. Accordingly, the Acting Commissioner found that the disputed information was exempt under clause 3(1).

The agency's decision was confirmed.

***Re McLerie and City of Melville* [\[2018\] WAICmr 7 \(PDF\)](#)**

The agency refused to deal with the complainant's access application under section 20 of the FOI Act. The Acting Commissioner was satisfied that the agency had taken reasonable steps to help the complainant to change the application to reduce the amount of work needed to deal with it; and that the work involved in dealing with the 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 Nahan and Department of Treasury* [\[2018\] WAICmr 8 \(PDF\)](#)**

The agency refused the complainant access to draft versions of the 2017-18 Treasurer's Parliamentary Budget Speech and draft versions of the Treasurer's Budget papers. The Acting Commissioner found that the disputed documents were exempt under clause 12(c) of Schedule 1 to the FOI Act on the basis that their public disclosure would infringe the privileges of Parliament.

The agency's decision was confirmed.

FOI training news – ADDITIONAL FOI COORDINATORS WORKSHOP DATE – 3 October 2018

Due to continued demand, we have added an additional FOI Coordinators Workshop to our previously scheduled 2018 workshop program – Wednesday 3 October 2018. Register early to avoid disappointment. All other currently scheduled workshops for 2018 are fully booked.

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

If a session is listed as fully booked, you can register for the relevant waitlist. This will give us the opportunity to contact you if there are cancellations.

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