



Freedom of Information Newsletter

Number 21 – September 2018

From the Acting Information Commissioner

Last week I attended a meeting of the Association of Information Access Commissioners in Sydney. This group consists of Ombudsmen and Information Commissioners from Australia and New Zealand who perform functions under freedom of information legislation in their jurisdictions. While the legislative framework in each jurisdiction differs, meetings of the Association allow for the efficient sharing of ideas, resources and research, benefitting all members. The importance of 'culture' in open and transparent government decision-making was an important theme of discussions at the meeting. Accountable decision-making is an important way to build community trust and engagement in government processes.

The meeting also issued a media statement in support of International Right to Know Day which occurs on 28 September 2018. This statement is available on our website [<here>](#).

Earlier this week in Melbourne I also attended two events that dealt with freedom of information issues.

The first was a panel forum jointly presented by the Monash University's School of Media, Film and Journalism and the Victorian Information Commissioner, which was aimed at taking stock of where information access is currently at in Australia and what can be done to improve it. The panel included John Cain (former Victorian Premier responsible for the introduction of Victoria's FOI laws), Sven Bluemmel (Victorian Information Commissioner), Moira Paterson (leading FOI researcher at Monash University) and Alison Sandy (journalist who is the FOI editor for Channel 7). A link to the video of this event should be available in the near future.

The second event - hosted by Monash University's School of Media, Film and Journalism and chaired by Associate Professor Johan Lidberg, Acting Head of Journalism - was a research round table attended by representatives of some of the Information Commissioner Offices around the country, a representative based in Singapore from the Open Government Partnership, and research staff and academics of Monash University. The purpose of the discussion was to develop ideas around defining and designing potential research projects concerning the functionality of FOI laws. Australia's ongoing commitments to the Open Government Partnership is an opportunity to take stock of where we are and where we want to go next and what research is needed to get there.

This month we have also tabled in Parliament our 25th Office of the Information Commissioner (OIC) Annual Report. See below for a link to that report. I would like to thank agencies for completing the Annual Statistical returns. Those returns allow me to fulfil my legislative obligation to report to Parliament about FOI applications made and dealt with by Western Australian agencies in the financial year.

Catherine Fletcher

Acting Information Commissioner

World of FOI – Right to Know Day – 28 September 2018

International Right to Know Day (**RTK Day**) is celebrated annually across the world on 28 September. In Australia, a number of information access jurisdictions will hold events to celebrate RTK Day. The Office of the Australian Information Commissioner has launched a website about the Right to Know – see <https://www.oaic.gov.au/rtk/>.



The Solomon Lecture – 24 September 2018 and November Screening in WA

The 2018 Solomon lecture was presented by the Queensland Office of the Information Commissioner on Monday 24 September 2018. In this year's lecture, Professor Ken Smith, Chief Executive and Dean of the Australian and New Zealand School of Government explored how open, transparent government is threatened from a range of ideological extremes. Those who constantly question our liberal democracy and its values, including fundamental human rights and the rule of law, neither value good government nor vital elements of it, such as Right to Information legislation. The transcript of the event is available at <https://www.oic.qld.gov.au/training-and-events/right-to-information-day>.

The OIC will screen the 2018 Solomon lecture with an introduction beforehand and discussion afterward lead by the Acting Information Commissioner, Catherine Fletcher in November this year. Stay tuned for updates about when and where. To receive updates about the screening, email advice_and_awareness@foi.wa.gov.au.

Agency news – National FOI Metrics 2016/17 data added

The 2016/17 data has been added to the Association of Information Access Commissioners National metrics dashboard, which compares access jurisdictions within Australia. The national metrics were developed to 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](#)).

The current dashboard of FOI metrics is available [<here>](#).

The dashboard does not currently include data from Western Australia in relation to Metric 5 – the percentage of all decisions made within the statutory time frame. This is because that data has not been available. This year the OIC office collected data from agencies about the number of applications not completed in the 'permitted period'. This will allow the OIC to report on Metric 5 for 2017/18. The data collected in this year's statistical return will allow this office to provide information to the NSW Information and Privacy Commission for inclusion in the dashboard of 2017/18 FOI metrics.

The data from the 2016/17 dashboard indicates that Western Australia has:

- 3rd highest number of access applications made to agencies – only behind the Commonwealth and Victoria;
- The highest applications per capita;
- The highest rate of access given (either in full or in part); and
- The lowest rate of external review as against number of applications first received in agencies.

OIC Annual Report Tabled

The OIC Annual Report was tabled in Parliament on 20 September 2018. It is available on our website [<here>](#). This year agencies reported receiving 17,258 access applications, a decrease of approximately 0.3 % from the previous year. 90% of decisions made by agencies were to provide access in some form. Less than 1% of all applications received by agencies involved a further request to this office for external review of the agency decision. Among other things, the Annual Report includes information about the Information Commissioner's decisions during the financial year, case studies, the Commissioner's recommendations for amendments to the FOI Act and a summary of the information provided by agencies in their statistical returns.

Recent decisions of the Information Commissioner

Re McNally and Town of Victoria Park [2018] WAICmr 9 (PDF)

Visitor logs for the agency for a specified period were found to be exempt under clause 3(1) of Schedule 1 to the FOI Act. The Information Commissioner was satisfied that the requested document would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. In this particular instance, the Commissioner considered that the public interest in favour of disclosure of the personal information in the requested document was not sufficient to outweigh the public interest in protecting the privacy of the individuals. The Commissioner considered that it was not practicable for the agency to edit the requested document pursuant to section 24 of the FOI Act, to delete the exempt information.

The agency's decision was confirmed.

Recent decision by the Supreme Court

Pearlman v The University of Western Australia [2018] WASC 245

The complainant appealed the Information Commissioner's decision to close his file without making a decision under sections 67 or 76 of the FOI Act. The Commissioner had closed the file on the basis that the matter had been resolved by conciliation.

Justice Smith decided that a decision not to issue a final decision, where it affects the substantive rights of the parties to a complaint, can be characterised as a 'decision' within the meaning of section 85(1) of the FOI Act, such that it may be appealed to the Supreme Court on a question of law.

Justice Smith considered that, while a complaint before the Commissioner can be finally disposed of by resolution of the complaint by negotiation or conciliation pursuant to section 71 of the FOI Act, in the circumstances of this case, there were insufficient grounds for the Commissioner to consider that the matter had been resolved by conciliation. The Commissioner's decision was set aside and the matter was remitted back to the Commissioner for reconsideration.

The appeal was upheld in part.

FOI training news – ADDITIONAL FOI DECISION WRITING WORKSHOP DATE – 22 November 2018

Due to continued demand, we have added an additional FOI Coordinators Decision Writing Workshop to our previously scheduled 2018 workshop program – Thursday 22 November 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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