



Freedom of Information Newsletter

Number 22 – November 2018

From the Acting Information Commissioner

In November this year, I will visit a number of agencies to provide staff briefings about the requirements and opportunities presented by the FOI Act. The FOI Act creates a right of access to documents of an agency subject to some limitations. It requires agencies to give effect to the FOI Act in a way that assists the public to obtain access to documents promptly and at the lowest reasonable cost.

It is important that all agency staff have an awareness of the FOI Act and their own responsibilities under the FOI Act because each officer can contribute to achieving the legislative objects to enable greater public participation in our democracy and to make State and local government more accountable to the public.

My office seeks to provide materials, training and briefings to assist agencies to ensure that agency staff understand their obligations under the FOI Act. If you have suggestions about materials that may assist you, please let us know. I am pleased to announce that, as part of my office's initiatives to ensure agencies are aware of their obligations under the FOI Act, the OIC has started preparations for its next full day *FOI in WA Conference* for agency officers to be held in late 2019.

Our first *FOI in WA Conference* was held in August 2017. Comments from that conference included:

- “an excellent networking opportunity and the chance to hear from others how they manage the process.”
- “I left the conference with some really good ideas for how to better communicate FOI within my workplace.”

We are planning for another helpful and productive conference in 2019.

Catherine Fletcher, Acting Information Commissioner

The Solomon Lecture – November Screening in WA – 29 November 2018

You are invited to attend a screening of the 2018 Solomon lecture. The Acting Information Commissioner will introduce the screening and facilitate a brief discussion after the briefing. **A light lunch will be provided.**

In this year's lecture, Professor Ken Smith, Chief Executive and Dean of the Australian and New Zealand School of Government explores 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>.

When: 12:00 noon – 1:30 pm, Thursday 29 November 2018

Where: Ground floor, Albert Facey House

To register for the event and assist us with catering please email advice_and_awareness@foi.wa.gov.au.

World of FOI – Open Government Partnership

In a [media release](#) of 21 September 2018, Senator the Hon. Mathias Cormann announced that the Commonwealth Government has formally endorsed Australia's Second Open Government National Action Plan, which aims to help increase government openness and accountability. More information about the Open Government Partnership, including the Second National Action Plan, is available at <https://ogpau.pmc.gov.au/australias-second-open-government-national-action-plan-2018-20>.

Reminder – 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. See our guide, [Calculating time and days](#), to assist you to understand timeframes under the FOI Act. Some timeframes may be extended by agreement between an agency and the access applicant.

Recent decisions of the Information Commissioner

Re King and Minister for Transport; Planning; Lands [2018] WAICmr 10 (PDF)

The complainant requested various documents relating to the town of Yarloop, Alcoa Wagerup and buffer areas around Alcoa Wagerup. The document in dispute was a briefing note attached to an email between the Minister's office and the Department of Planning, Lands and Heritage. The A/Commissioner was satisfied that the disputed document was prepared to brief a Minister in relation to a matter prepared for possible submission to Cabinet. On that basis the A/Commissioner found that the disputed document was exempt under clause 1(1)(d)(i) of Schedule 1 to the FOI Act.

The Minister's decision was confirmed.

Re Crawford and City of Melville [2018] WAICmr 11 (PDF)

The complainant applied for access to documents concerning telephone conversations and meetings between a named third party - a private individual - and certain officers of the agency for a specific period. The agency refused access to the requested documents under section 23(2) of the FOI Act, on the ground that it is apparent from the nature of the documents as described in the complainant's access application that they would all be exempt under clause 3(1) and clauses 5(1)(e) and (f) of Schedule 1 to the FOI Act.

The A/Commissioner considered the requirements of section 23(2) and found that it was apparent from the nature of the documents as described in the complainant's access application that, if any such documents exist, they would be exempt under clause 3(1) of Schedule 1 to the FOI Act and that there was no obligation on the agency under section 24 of the FOI Act to give access to an edited copy of any of those documents. The A/Commissioner confirmed the agency's decision to refuse access to the requested documents under section 23(2) of the FOI Act.

Re Adam and City of Wanneroo [2018] WAICmr 12 (PDF)

The complainant disputed: the agency's decision to refuse access to documents under section 26 of the FOI Act; the agency's claim for exemption under clause 3(1) of Schedule 1 to the FOI Act; and the agency's decision to provide access by way of inspection to a document on the basis that providing a copy would breach copyright in that document. The A/Commissioner was satisfied that the agency had taken all reasonable steps to find the documents the subject of the complainant's access application but that additional documents did not exist or cannot be found. On that basis, the Commissioner found that the agency's decision to, in effect, refuse access to documents under section 26 was justified. The A/Commissioner also found that the disputed information was exempt under

clause 3(1) and that access to one document should be by inspection only because the document was subject to copyright (section 27(2)(c)).

The agency's decision was confirmed.

FOI training news – 2019 Workshop Calendar available

The 2019 dates for the FOI Coordinators Workshops and the FOI Decision Writing Workshops are now available on our website [<here>](#).

Subscription and feedback

Click [<here>](#) to subscribe to the FOI Newsletter and decision announcements.

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