



Freedom of Information Newsletter

Number 23 – February 2019

From the Acting Information Commissioner

Welcome to our first FOI newsletter for 2019.

We will now publish these newsletters on a quarterly basis. This newsletter includes news about:

- the next FOI in WA Conference to be held in November 2019;
- training opportunities being offered by the OIC;
- information about the multilateral Open Government Partnership to which Australia and New Zealand are both committed; and
- some observations and comments about FOI good practice.

Of particular note, in the summary of my published decisions over the last three months, is the first published decision on the exemption in clause 15 of Schedule 1 to the FOI Act dealing with matter that would reveal information about transactions relating to gold or other precious metal (an exemption clause which is, at least in Australia, unique to Western Australia).

On a personal note, I was recently re-appointed for a further 6 month term as Acting Information Commissioner commencing on 16 January 2019. I continue to feel honoured by this appointment and privileged to undertake such an interesting role with a very capable team to assist me.

In the last few months, after a competitive market recruitment process, we have appointed long term existing staff members to the two roles of Senior Legal Officer and Principal Legal Officer. We have also recruited two new members of staff to assist with clerical and administrative tasks, Renae Bunko and Antonetta Papalia, who are both already making a significant contribution to our work. Soon we hope to commence recruitment for another Level 6 Investigations/Legal Officer to backfill an existing position.

Having a further term as Acting Information Commissioner allows me to commence or continue with some other important longer-term strategic tasks associated with running the OIC as well as carrying out the day-to-day business of conducting external reviews of agency decisions and providing advice and awareness services to both agencies and the public around the operation of the FOI Act.

I have also recently provided submissions/comment on matters concerning or touching upon FOI, information management and/or privacy as well as assisting two government working groups dealing with similar issues. Whilst we are only a small team, I believe that collectively we have significant experience and knowledge to share with others in order to assist with good policy/law development on these issues.

Finally, I want to acknowledge the ongoing hard work of my staff who continue to offer me great support to effectively and efficiently discharge my responsibilities under the FOI Act. We continue to achieve a very high rate of resolution of external review matters by conciliation and a high rate of stakeholder satisfaction with our services. Going forward we aim to strive to improve the timeliness of our external review function and assist agencies to meet their obligations under the FOI Act.

Catherine Fletcher, Acting Information Commissioner

Commissioner attends Association of Information and Access Commissioners meeting February 2019

Earlier this month the Acting Information Commissioner attended the February 2019 meeting of the Association of Information and Access Commissioners in Wellington, New Zealand. The meeting was hosted by the Office of the New Zealand Ombudsman. The Commissioners or Ombudsman (who have responsibility for freedom of, or right to, information laws) attending were:

- Peter Boshier, Chief Ombudsman, New Zealand
- Angelene Falk, Australian Information Commissioner
- Elizabeth Tydd, Information Commissioner, New South Wales
- Rachael Rangihaeata, Information Commissioner, Queensland
- Wayne Lines, Ombudsman, South Australia
- Richard Connock, Ombudsman, Tasmania
- Sven Bluemmel, Information Commissioner, Victoria
- Catherine Fletcher, Acting Information Commissioner, Western Australia
- Rocelle Ago, Acting Assistant Australian Information Commissioner
- Bridget Hewson, Deputy Ombudsman, New Zealand
- Joanne Kummrow, Victorian Acting Public Access Deputy Commissioner
- Paul Pfitzner, Senior Assistant Ombudsman, Australian Capital Territory

The Commissioner reports:

“We were given an exceedingly warm, Maori-style, welcome from the New Zealand Chief Ombudsman, Peter Boshier, and his staff. At that meeting each jurisdiction presented a written and oral report about recent decisions and issues arising in their respective FOI/RTI jurisdictions. In addition to those reports, we met with the New Zealand Minister of Education and State Sector, the Hon Chris Hipkins, and State Sector Commissioner, Peter Hughes, who both spoke to us about the New Zealand government's overall policy on open government and promoting FOI culture in the state public sector.



Of particular interest is the New Zealand Government's decision that all Cabinet papers will be released no later than 30 business days after a Cabinet decision from 1 January 2019, unless there is a "good reason" not to release those papers. The Government are on record as saying that this change in policy is consistent with the spirit of the New Zealand *Official Information Act 1982*, which states that information should be made available unless a good reason exists for withholding it. Finally, the Commissioners were hosted by the New Zealand Chief Ombudsman at a very convivial dinner at the New Zealand Parliament in Wellington (known as “The Beehive” – see the above of a number of the Commissioners and Ombudsman on the steps of the NZ Parliament). The Commissioners will next meet again later this year.”

Save the date – FOI in WA Conference on 21 November 2019

The next FOI in WA Conference for state and local government officers will be held on 21 November 2019 in the Education Building at Fiona Stanley Hospital. Plans are underway to present a conference that provides practical information and considers some of the big issues in relation to freedom of information and open and accountable government. We encourage you to save the date in your

calendars now. You may wish to encourage your colleagues, who may benefit from a better understanding of effective information access processes, to also save the date.

The registration fee this year will be \$109 for the day, including lunch. You may want to include the fee as you plan the budget for the next financial year.

To receive notice when conference registrations are open click here <[Registrations open notification](#)>.

World of FOI – Open Government Partnership – The New Zealand National Action Plan 2018-2020

New Zealand, along with Australia, is one of 19 countries participating in the Open Government Partnership (OGP) that has prepared an OGP National Action Plan. Participating countries work in a two-year national action plan cycle. New Zealand joined the OGP in 2013. It is now on its third National Action Plan for the period 2018 to 2020. For more information about the New Zealand OGP National Action Plan, go to <https://www.ogp.org.nz/>.

Australia is on its Second OGP National Action Plan – see <https://ogpau.pmc.gov.au/australias-second-open-government-national-action-plan-2018-20>.

FOI Newsletter now published quarterly

From 2019, the OIC Freedom of Information newsletter will be published quarterly. This year the newsletter will include examples of good practice in information access. Many agencies take steps to ensure that information is appropriately accessible to members of the public that we can all learn from. If you have examples of the ways that your office has facilitated greater access to information or more effective or efficient use of freedom of information resources, please let us know so that we can share your experience and ideas.

Good practice – an agency FOI email address

Does your agency have a dedicated FOI email address? It is not a requirement of the FOI Act, so why do it? Publishing a dedicated FOI email address on your agency's website has benefits for your agency, members of the public and this office. Benefits include:

- There is a central point at which applications can be lodged, giving greater certainty to applicants and agencies (Note: agencies cannot limit the lodgement of applications simply to an email address).
- An email address can give the agency the opportunity to address enquiries before a matter escalates to a formal access application under the FOI Act.
- Electronic records are created, which can assist all parties to keep a record of communications between applicants and agencies.
- The OIC has a generic contact point to which it can refer enquiries about particular agencies.
- The OIC generally suggests that applicants contact the agency before they may make an access application to avoid unnecessary work for both parties.

Good practice – FOI Contacts in Health

Congratulations to the Department of Health and to the various State Health Services that have published a list of WA health freedom of information contacts for Western Australia:

https://www.healthywa.health.wa.gov.au/Articles/U_Z/WA-Health-freedom-of-information-contacts.

Decision considering clause 15 of Schedule 1 to the FOI Act

The A/Information Commissioner considered the application of the exemption in clause 15 of Schedule 1 to the FOI Act in a recent decision, *Re Bennett & Philp Pty Ltd and Gold Corporation* [\[2019\] WAICmr 1](#) (see *Recent decisions* below for details). This is the first published decision in which the Information Commissioner has considered clause 15.

Clause 15 provides that matter is exempt if its disclosure would reveal information about

- (a) gold or precious metal received by Gold Corporation from a person, or held by Gold Corporation on behalf of a person, on current account, certificate of deposit or fixed deposit; or
- (b) a transaction relating to gold or other precious metal received or held by Gold Corporation.

There are now published decisions of the Information Commissioner that consider at least part of each of the exemption clauses in the FOI Act. You can search the Information Commissioners published decisions at <https://www.oic.wa.gov.au/en-au/UR10001>.

Recent decisions of the Information Commissioner

***Re Palermo and Legal Profession Complaints Committee* [\[2018\] WAICmr 13 \(PDF\)](#)**

The complainant applied for access to documents submitted to the agency by named private individuals. The A/Commissioner found that it is 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) and that there is 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 Bennett & Philp Pty Ltd and Gold Corporation* [\[2019\] WAICmr 1 \(PDF\)](#)**

The complainant applied for access to a variety of documents that broadly related to either the Perth Mint's position on the applicability or otherwise of GST on certain acquisitions by the Perth Mint or to documents relating to complaints, including to the Government of India, regarding the importation of gold mined in Australia into India. The agency refused the complainant access to all of the requested documents.

The A/Commissioner varied the agency's decision and found that certain documents were outside the scope of the complainant's access application; certain documents were exempt under clause 15(1)(b) of Schedule 1 to the FOI Act; certain documents were exempt under clause 10(4); certain documents were exempt under clause 5(1)(c); the agency's decision to neither confirm nor deny the existence of documents within the last part of the access application was justified on the basis that those documents, if they existed, would be exempt under clause 2(1)(a); and it was not practicable for the agency to give the complainant access to edited copies of the disputed documents in accordance with section 24 of the FOI Act.

***Re Pearlman and University of Western Australia* [\[2019\] WAICmr 2 \(PDF\)](#)**

This matter was remitted to the A/Commissioner by the Supreme Court in *Pearlman v The University of Western Australia* [\[2018\] WASC 245](#).

The complaint related to the agency's refusal to deal with an access application pursuant to section 20 of the FOI Act. The agency agreed to deal with the reduced scope identified by the complainant. The A/Commissioner considered that as the agency had now withdrawn its claims under section 20 and had agreed to deal with the application, there was nothing remaining in dispute for her to determine. Accordingly, the A/Commissioner decided to stop dealing with the complaint on the basis that it was now lacking in substance, pursuant to section 67(1)(b) of the FOI Act.

Re Gaffney and Department of Jobs, Tourism, Science and Innovation [\[2019\] WAICmr 3 \(PDF\)](#)

The complainant applied to the agency for access to the Community Development Plan and annual reports submitted by Rio Tinto, as referred to in a particular State Agreement (**the Agreement**). The agency refused access to the documents on the ground that the documents were exempt under clause 4(3) of the FOI Act. After consulting with a substantial number of third parties named in the documents, the A/Commissioner found that disclosure would reveal information about the business, professional, commercial or financial affairs of third parties, but was not persuaded that disclosure would have an adverse effect on those affairs. Further, the A/Commissioner did not consider that disclosure would prejudice the future supply of information of that kind to the Government or an agency, as Rio Tinto was required to provide information of 'that kind' to the agency, under the Agreement.

The A/Commissioner set aside the agency's decision to refuse access to the documents and found that they were not exempt under clause 4(3) of Schedule 1 to the FOI Act.

FOI training calendar

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

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