



# Freedom of Information Newsletter

## Number 30 – February 2021

### *From the Information Commissioner*

Welcome to our first FOI Newsletter for 2021.

In 2021, as the community continues to face various challenges, such as the COVID-19 pandemic, fire and flood, we are reminded that public trust is critical to the success of government social and economic policies and recovery measures. Timely access to relevant and reliable government-held information is an important part of building that public trust. My office continues to support both the public sector in their work around access to information and to promote the community's right to timely and low-cost access to information, so fundamental in a robust democratic society.

The OIC has begun work to meet our [2020-2023 Strategic Goals](#). Key to the success of most of what we do will be progress with the strategic goal of investing in sound information systems that support our operational needs.

In response to the COVID-19 pandemic, the OIC recently moved its face-to-face training online using Zoom, including the FOI Coordinators Workshop and FOI Decision Making Workshop. Based on the learnings from those live, online workshops this office is developing online training that can be accessed remotely by officers at any time. While we continue to develop our online training materials, this office will limit the live training on offer. Further information about our online training modules, which will become available in March, is provided in this newsletter.

In November last year, the OIC hosted a remote meeting of the Association of Information Access Commissioners (**the AIAC**). The meeting was held at the State Library of Western Australia, using Microsoft Teams. Thank you to the Library staff for allowing us to use their facilities and technology. Participants in the meeting were welcomed with a recorded message from the Honourable Chief Justice Peter Quinlan who acknowledged the importance of FOI for accountability and transparency. In accordance with our general practice



Office of the  
Information Commissioner  
Freedom of information for Western Australia

### Strategic Goals 2020-2023

- Provide a fair, independent and timely external review service**
  - ✓ Provide an efficient and effective early resolution process
  - ✓ Provide a fair, timely and effective formal external review process
  - ✓ Provide clear decisions, with reasons, to best inform the public
- Enhance the information access culture in Western Australian government agencies**
  - ✓ Provide clear, accurate, relevant and timely advice to agency staff to enhance their understanding of their responsibilities under the WA FOI Act
  - ✓ Ensure our resources, tools and training services support information access competency within agencies
  - ✓ Identify and recommend changes to legislation and administrative practice that will facilitate improved information access practice across the State
  - ✓ Explore opportunities for collaboration to champion the principles of open government
- Enhance public awareness and understanding of freedom of information in Western Australia**
  - ✓ Ensure we provide the community with accessible, inclusive and user-friendly information
  - ✓ Increase community awareness of freedom of information rights
  - ✓ Promote community understanding about the role of the Information Commissioner
- Foster a supportive and collaborative workplace that advances staff capabilities and encourages innovation and creativity**
  - ✓ Ensure that our organisational structure promotes open lines of communication
  - ✓ Value and acknowledge achievements
  - ✓ Explore flexibilities that enhance working arrangements and professional development
  - ✓ Cultivate a positive organisational culture that supports personal wellness
- Invest in sound information systems that support our operational needs**
  - ✓ Use technology to improve efficiency and accessibility to our services
  - ✓ Implement a case management system that meets our reporting needs
  - ✓ Transition to an electronic records management system to better manage our record-keeping obligations
  - ✓ Refine, review and improve our knowledge management system

at AIAC meetings, each jurisdiction presented written and oral reports about recent decisions and issues arising in their respective jurisdictions. The Commissioners will meet again mid-2021.

I acknowledge that it has been a challenging start to 2021, following a challenging past 12 months. I understand there have been additional pressures on staff dealing with FOI applications in the midst of many other demands.

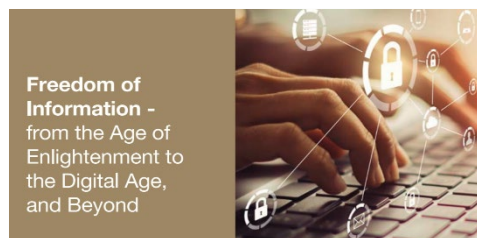
To support your work, I remind you that the OIC publications relating to COVID-19 remain relevant - [Applying for documents during the COVID-19 pandemic](#) and [COVID-19 Managing FOI timeframes and potential office closures](#).

Finally, remember that your work in connection with freedom of information is important, as it enables members of the public to exercise their rights under the FOI Act which underpins accountability and transparency of government.

**Catherine Fletcher**  
**Information Commissioner**

### ***'FOI from the Age of Enlightenment to the Digital Age and beyond'***

Read the Information Commissioner's article from the [February 2021 edition of Brief](#), the monthly publication of the Law Society of Western Australia. The article provides an overview of the origins and operation of information access laws and discusses some of the contemporary issues and challenges facing those laws.



### ***World of FOI – About the Association of Information Access Commissioners***

The AIAC was established in 2010 and consists of the statutory officers in each Australian and New Zealand jurisdiction responsible for FOI and information access. Members meet twice a year to facilitate the sharing of knowledge and resources; foster cooperation and innovation in proactive disclosure, information access, related information policy and open government initiatives; and promote best practice among the authorities.

The Australian and New Zealand Commissioners and Ombudsmen who have responsibility for information access laws are:

- Angelene Falk, *Australian Information and Privacy Commissioner* (Cth)
- Peter Boshier, *Chief Ombudsman* (NZ)
- Elizabeth Tydd, *Information Commissioner* (NSW)
- Rachael Rangihaeata, *Information Commissioner* (Qld)
- Sven Bluemmel, *Information Commissioner*, (Vic)
- Catherine Fletcher, *Information Commissioner* (WA)
- Wayne Lines, *Ombudsman* (SA)
- Peter Shoyer, *Ombudsman* (NT)
- Richard Connock, *Ombudsman* (Tas)
- Michael Manthorpe, *Ombudsman* (ACT)

Each jurisdiction operates under its own information access legislation. While the legislation differs between the jurisdictions, there are key information access issues common to all members of the network.

## **Information Access newsletters in Australia**

While the various jurisdictions operate under different legislation, it can be beneficial to learn from practices and policies in other jurisdictions, while always considering the specifics of our own legislation. The following newsletters produced by the offices of the Australian and Victorian Information Commissioners are useful resources.

- Office of the Australian Information Commissioner: [Information Matters](#)
- Office of the Victorian Information Commissioner: [OVIC Monthly Newsletter](#)

## **Did you know? – Transfer Tips**

Some tips when you are considering transferring an access application in part or in full to another agency:

- Be clear whether the transfer is under section 15(1) or 15(2) of the FOI Act.
- Check with the other agency before you transfer the access application. If the transfer is under section 15(1), check whether the receiving agency can confirm that it holds the requested documents. If the transfer is under section 15(2), the receiving agency may be able to provide you with its views regarding disclosure of the requested documents and the transfer may not be necessary.
- When transferring under section 15(2), provide the receiving agency with copies of the requested documents that the transfer relates to. The agency to which the access application is transferred under section 15(2) is only required to make a decision regarding access to those particular documents and not about other documents that it holds which may fall within the scope of the documents requested in the original application (section 15(6)).
- Give the access applicant the contact details of the person in the receiving agency dealing with the transferred access application.

While the Information Commissioner does not have power to review an agency's decision to transfer an access application, the Commissioner does have jurisdiction to review an agency's decision to refuse access on the ground that it does not hold the requested documents. A decision to transfer an application under section 15(1) implies that the relevant agency has decided that it does not hold the requested documents. As a result, the Commissioner may deal with an application for external review against a decision to transfer an application under section 15(1) as a review of a deemed decision of the original agency to refuse access to documents under section 26 of the FOI Act: see *Re MacTiernan and Minister for Regional Development* [2009] WAICmr 29 at [7]-[13].

More information about transfers is available in the [FOI Coordinators Manual](#), available on our website.

## **Good news story – contacting the applicant saves unnecessary work**

An agency officer contacted the OIC seeking advice about an access application that had been transferred in part to their agency. The agency had limited time to deal with the transferred application and was not clear about the scope of the application that had been transferred to them. The OIC suggested the agency contact the access applicant to seek clarity about what they really wanted and to seek additional time to deal with the access application. The agency's discussion with the access applicant resulted in the applicant withdrawing their access application.

Officers can be reluctant to contact an access applicant in person. However, a telephone call or meeting can often have positive outcomes including building trust between the applicant and the agency. It can also reduce the work involved in dealing with an application because an agency can clarify what the applicant is or is not seeking. It is good practice to follow any phone call or meeting with written confirmation of what was agreed in the conversation.

### **Agency news – Agency FOI Reference Group**

The purpose of the Agency FOI Reference Group (**the AFRG**) is to promote and advocate for good practice in FOI by:

- exploring ways that the OIC can further assist FOI officers in their role, particularly through the information provided via the OIC website, publications and training;
- improving FOI Coordinator and agency knowledge of the FOI process and current issues; and
- sharing information about trends in FOI decisions.

Since December 2020, the AFRG has been assisting the OIC with a review of current OIC publications available on our website. The review started with our publications for members of the public.

### **Review of OIC publications**

The OIC has commenced a review of our publications available on the OIC [website](#). This review is an important initiative towards fulfilling the OIC [2020-2023 Strategic Goals](#). The AFRG is assisting the OIC with this review. Throughout 2021, feedback will be sought from the AFRG about the full suite of OIC publications, as we seek to ensure that members of the public and agencies are provided with relevant and useful information about their rights and responsibilities under the FOI Act.

The current focus of the review is the publications listed on our website under [For the public](#) and [For agencies](#). If you would like to provide feedback about any of those publications or to suggest additional publications that you think would assist members of the public or agencies, please email us at [advice\\_and\\_awareness@oic.wa.gov.au](mailto:advice_and_awareness@oic.wa.gov.au).

### **OIC – NEW online training for 2021**

The OIC is continuing to develop its online training resources. While undertaking that work, it is not delivering its live FOI Coordinators Workshop or Decision Writing workshop. However, the substance of the FOI Coordinators Workshop will soon be available for State and local government officers in a new online *FOI Fundamentals Series*, consisting of eight modules that can be accessed online. To request links to the modules email us at [advice\\_and\\_awareness@oic.wa.gov.au](mailto:advice_and_awareness@oic.wa.gov.au). Modules for decision-makers will be developed during this year.

The OIC continues to offer FOI Briefings by request and subject to availability.

### **Recent decisions of the Information Commissioner**

#### ***Re Mineralogy Pty Ltd and Department of Mines, Industry Regulation and Safety* [\[2020\] WAICmr 14 \(PDF\)](#)**

The complainant sought external review of the agency's decision to give access to edited copies of certain documents and to refuse access to certain documents that included correspondence

between the agency and another corporate entity relating to the Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002 (WA) (the State Agreement). The agency claimed that the disputed information was exempt under clauses 3(1), 4(3) and 8(2) of Schedule 1 to the FOI Act.

A third party was joined as a party to the complaint. The Commissioner considered that parts of one document were outside the scope of the access application, that other documents were exempt under clause 4(3) and that certain information was exempt under clause 3(1). The Commissioner did not accept that the disputed documents were exempt under clause 8(2).

The Commissioner varied the agency's decision.

***Re Onslow Salt Pty Ltd and Department of Jobs, Tourism, Science and Innovation*** [\[2021\] WAICmr 1 \(PDF\)](#)

The complainant sought external review of the agency's decision to give an access applicant access to certain environmental reports submitted by the complainant in accordance with the requirements of the Onslow Solar Salt Agreement Act 1992. The complainant claimed that the reports contained information that was exempt under clause 4(3) of Schedule 1 to the FOI Act. The complainant also claimed that some information was outside the scope of the access application.

The Commissioner accepted that disclosure of the disputed information would reveal information about the business affairs of the complainant, but not that its disclosure could reasonably be expected to have an adverse effect on the affairs of the complainant, or prejudice the future supply of information of that kind to the government or an agency, as required by clause 4(3). Accordingly, the Commissioner found that the disputed information was not exempt under clause 4(3). The Commissioner also noted that a complainant's right, as a third party, to seek review of the agency's decision was limited to whether information is exempt under clause 3 or clause 4 of Schedule 1 to the FOI Act.

The Commissioner confirmed the agency's decision.

***Re Onslow Salt Pty Ltd and Department of Mines, Industry Regulation and Safety*** [\[2021\] WAICmr 2 \(PDF\)](#)

The complainant sought external review of the agency's decision to give an access applicant access to various environmental reports submitted by the complainant, in accordance with the requirements of the Onslow Solar Salt Agreement Act 1992. The complainant claimed that the reports contained information that was exempt under clauses 4(2) and 4(3) of Schedule 1 to the FOI Act.

As the Commissioner was not persuaded that the disputed information had a commercial value, she found that information was not exempt under clause 4(2). The Commissioner accepted that disclosure of the disputed information would reveal information about the business affairs of the complainant, but not that its disclosure could reasonably be expected to have an adverse effect on the affairs of the complainant, or prejudice the future supply of information of that kind to the government or an agency, as required by clause 4(3). Accordingly, the Commissioner found that the disputed information was not exempt under clause 4(3).

The Commissioner confirmed the agency's decision.

## ***Subscription and feedback***

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

Click [<here>](#) to provide your feedback or suggestions for the FOI Newsletter.

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#### **Acknowledgement of Country**

*The Office of the Information Commissioner acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders both past and present.*