



Freedom of Information Newsletter

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From the Information Commissioner - constructive participation in conciliation conferences

Parties to external review applications are often required to attend a case conciliation conference as one of the early steps in the external review process. A conciliation conference provides parties with an opportunity, in the presence of a trained conciliator, to try and resolve their differences. The experience of my office has been that where parties attend the conciliation conference with a willingness to listen to the other party and actively participate in discussion, there is considerable opportunity to resolve the complaint or at least clarify and reduce the issues in the dispute. Resolving a complaint or reducing the issues in dispute usually means that the work required of parties is significantly reduced. I encourage parties attending a conciliation conference to come prepared to participate meaningfully in the conference. Guides for parties, [Understanding the conciliation process](#) and [Preparing for a conciliation process](#), are available on our website.

Did you know? - the importance of the internal review

A quarter of agency FOI access decisions made in the 2015 financial year were varied or reversed by the agency on internal review. An applicant's right to seek internal review and the opportunity for an agency to internally review a decision are important aspects of ensuring that access is given to documents in accordance with the FOI Act.

Sometimes agencies elect to have the principal officer of the agency make the initial decision in relation to an access application. The effect of such a decision is that internal review is not available under section 39(3) of the FOI Act and a person who is aggrieved by a decision made by the agency will necessarily have to apply directly to the Information Commissioner for external review. This is not a desirable outcome.

Internal review is a valuable step in the FOI review process. Among other things, an internal review provides a cost effective, quick and accessible form of review and often reduces the number of matters that go to external review. The external review process is also likely to place more demands on agency resources than an internal review.

Agency news - new process for production of documents to the Commissioner

When the Commissioner receives a valid application for external review of an agency's decision under the FOI Act (**a complaint**) he notifies the relevant agency of the complaint and requires the production of certain documents to his office. The documents that an agency is required to produce to the Commissioner will vary

depending on the nature of the complaint. This office has recently refined the administrative process for producing documents to the Commissioner with a view to reducing the workload for agencies. If your agency is notified of a complaint and required to produce documents to the Commissioner, please thoroughly read the notice requiring the production of documents together with the information sheet accompanying the notice. The process may be different to what the agency has previously been required to do. If you do not understand the process for producing documents please contact us to clarify what is expected. An agency guide, [Producing documents to the Information Commissioner](#), is available on our website.

Recent decisions of the Information Commissioner

Re Alexander and Department of Fisheries [2015] WAICmr 23 (PDF)

The agency gave access to an edited copy of a report titled *Review of Access and Allocation Panel Advice for the Developing Octopus Fishery*. The Commissioner found that some of the deleted information was outside the scope of the access application and the remainder of the deleted information was exempt under clause 8(2) of Schedule 1 to the FOI Act. The Commissioner found that the complainant could not expand the scope of his application to include personal or business information of third parties if he had previously agreed to remove that from the scope of the application. The agency's decision was confirmed.

Re Mulrooney and SMHS Royal Perth Hospital [2015] WAICmr 22 (PDF)

The Commissioner found that the agency's decision to, in effect, refuse access to documents under section 26 was justified. The agency had taken all reasonable steps to find the additional requested documents but they could not be found or did not exist.

The agency's decision was confirmed.

Re Ferguson and Shire of Dardanup [2015] WAICmr 21 (PDF)

Documents arising out of a complaint made by the access applicant to the agency about a third party were found to be exempt under clause 3(1) of Schedule 1 to the FOI Act. The Commissioner considered that the agency had not established that the documents were exempt under clause 5(1) of Schedule 1 but they were exempt under clause 3(1).

The agency's decision was varied.

FOI training news

Upcoming [training dates](#) for agencies. Places are available.

The **FOI Coordinators Workshop** introduces participants to the objects and principles of the FOI Act and the major features of the legislation. Topics include the role of decision-makers; FOI applications; exemptions; consultation with third parties; charges; notices of decision and review; amendment of records; publication of information; statistics and reporting.

The **Decision Writing Workshop** is designed to enhance decision-makers' skills and confidence in writing a notice of decision that complies with the *Freedom of Information Act 1992*. Participants will be expected to already have a basic understanding of the requirements of the FOI Act.

Subscription and feedback

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