



Freedom of Information Newsletter

Number 8 – July 2016

From the Information Commissioner – Briefing Ministers about access applications

In my [2014 Annual Report](#) to Parliament (at page 20), I referred to enquiries my office receives from agencies about whether it is appropriate to inform their Minister about FOI applications received by the agency. Under the FOI Act, Ministers are separate agencies to the Departments and other bodies which they oversee. In all cases it is the principal officer of an agency, not the Minister, who is responsible for making decisions of the agency under the FOI Act. Decisions must be made with regard to the provisions of the FOI Act as passed by the Parliament, not by reference to inappropriate considerations of political expediency or convenience.

I encourage agencies to consider my comments on this matter in the 2014 Annual Report.

World of FOI – FOI anniversaries

4 July 2016 marked the 50th anniversary of the signing of the *Freedom of Information Act* in the United States of America. 2016 is the 250th anniversary of what is regarded as the first freedom of information legislation - *His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press* (1766) – proclaimed on 2 December 1766 by Adolphus Frederick, King of Sweden.

Did you know? – Agency statistical returns are due this week

Under section 111 of the FOI Act the Information Commissioner's annual report to Parliament must include certain specified information relating to the number and nature of applications dealt with by agencies under the FOI Act during the year. Under this section agencies have to provide the Commissioner with such information as required for the purpose of preparing the annual report. In early July, all agencies were invited by email to complete an online statistical survey related to their FOI activity for the 2015/16 financial year. This survey was requested to be completed and submitted by Friday 22 July 2016. FOI Coordinators are asked to assist with this process. If you have any questions about completing the survey please contact the OIC.

Agency news – New Publication – Dealing with information related to an exempt agency

The OIC has produced a new guide about dealing with access applications that include documents that may relate to an exempt agency. The guide, [Dealing with requests for documents related to an 'exempt agency'](#) is now available on the OIC website under 'Useful Resources\Publications\OIC Guidance'. If an agency receives an access

application for documents that relate to an exempt agency, there are a number of issues that may need to be considered. The agencies listed in Schedule 2 to the FOI Act are exempt agencies for the purposes of the FOI Act. An access application cannot be made to an exempt agency. However, this does not mean that a document held by an agency is exempt simply because it relates to an exempt agency. See the guide for more information.

Agency news –Information Statements

Under section 96 of the FOI Act agencies are required to publish an up-to-date information statement about the agency, which should be reviewed each year to ensure its currency. A guide to producing an information statement is available on the OIC website under 'Useful Resources\Publications\OIC Guidance': [Information Statement Guidelines](#).

Recent decisions of the Information Commissioner

Re 'N' and SMHS - Royal Perth Hospital [2016] WAICmr 7 (PDF)

The complainant sought amendment of certain personal information about him recorded in the complainant's medical records held by the agency by deletion of that information. Under section 45(1) of the FOI Act an individual may apply for amendment of their personal information if the information is inaccurate, incomplete, out-of-date or misleading. The A/Commissioner was not satisfied that the disputed information was inaccurate, incomplete, out-of-date or misleading. The A/Commissioner confirmed the agency's decision not to amend the disputed information in the manner requested by the complainant.

The agency's decision was confirmed.

Re Seven Network (Operations) Limited and Department of Corrective Services [2016] WAICmr 8 (PDF)

The Commissioner found that some requested CCTV footage that had been recorded at a prison was exempt under clause 5(1)(h) of Schedule 1 to the FOI Act. Other requested CCTV footage was found not to be exempt under clause 5(1)(h). Information is exempt under clause 5(1)(h) if its disclosure could reasonably be expected to endanger the security of a prison. The Commissioner considered that disclosure of certain footage could reasonably be expected to compromise the agency's systems for the detection and prevention of the introduction of contraband into the prison, taking into consideration factors such as camera angles, footage quality and camera location. The Commissioner was not persuaded that disclosure of the other footage that was captured from cameras that were easily discernible from the exterior of the prison could reasonably be expected to endanger the security of the prison.

The agency's decision was varied.

Re Helm and Department of Planning [2016] WAICmr 9 (PDF)

Information was found to be exempt under clause 14(1)(c) of Schedule 1 to the FOI Act. Clause 14(1)(c) provides that matter is exempt if it is matter of a kind mentioned in section 23(1) of the *Parliamentary Commissioner Act 1971 (WA) (the PC Act)*. The Commissioner was satisfied on the information before him that the disputed information consisted of information obtained by the Ombudsman or his officers

during the course of, or for the purposes of, an investigation under the PC Act. Accordingly, the Commissioner found that the disputed information is matter of a kind mentioned in section 23(1) of the PC Act and is therefore exempt under clause 14(1)(c). The agency's decision was varied.

Re 'O' and Housing Authority [2016] WAICmr 10 (PDF)

The Commissioner found that the agency's decision to refuse access to the requested CCTV footage was justified on the basis that the footage was exempt under clause 5(1)(e) of Schedule 1 to the FOI Act. Clause 5(1)(e) provides that matter is exempt if its disclosure could reasonably be expected to endanger the life or physical safety of a person. The Commissioner also found that the agency's decision to refuse access to additional documents under section 26 of the FOI Act on the basis that they cannot be found or do not exist was justified.

The agency's decision was confirmed.

FOI training news

Upcoming training dates for agencies can be found [<HERE>](#). If a session is listed as full, please register for the waitlist. This will give us the opportunity to contact you if there are cancellations or, if there is considerable demand, to schedule another training session.

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; and 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* (WA). Participants will be expected to already have a basic understanding of the requirements of the FOI Act.

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Office of the Information Commissioner

Phone: (08) 6551 7888

Freecall (WA country landline callers only): 1800 621 244

Fax: (08) 6551 7889

Email: info@foi.wa.gov.au

Web: www.foi.wa.gov.au

Address: Albert Facey House, 469 Wellington Street, Perth WA 6000