



Office of the
Information Commissioner

Freedom of information for Western Australia

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Ms Elizabeth Hampton
Acting Australian Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

By priority post and by email to: foidr@oaic.gov.au

Dear Ms Hampton

**PUBLIC CONSULTATION — DISCLOSURE OF PUBLIC SERVANTS' NAMES
AND CONTACT DETAILS**

Thank you for your letter dated 1 July 2019 inviting my office's comment on your office's discussion paper released on 1 July 2019 relating to the disclosure of public servants' names and contact details when processing or responding to FOI requests.

As the Western Australian Information Commissioner, my main function under the *Freedom of Information Act 1992* (WA) (**the FOI Act**) is to undertake independent external review of the merits of decisions made by Western Australian State and local government agencies on access applications and requests to amend personal information under the FOI Act. These external reviews require me, and previously my predecessors, to consider issues around the disclosure of the names and contact details of officers of WA government agencies under the FOI Act.

I note that the consultations questions in the discussions paper are directed at agencies and members of the public. Noting that the FOI legislation that my office is required to apply and operate under is different to the Commonwealth FOI legislation, the intent of this submission is to provide some guidance on how these issues have been dealt with in the WA jurisdiction, which your office may wish to consider in its review of the Commonwealth FOI guidelines.

Prescribed details about an officer of an agency is not exempt personal information

Under clause 3(1) of Schedule 1 to the FOI Act, information is exempt if its disclosure would reveal personal information about an individual (whether living or dead). Personal information is defined in the Glossary to the FOI Act.¹ On its face, personal information about an officer of an agency is exempt under clause 3(1). The exemption in clause 3(1) is

¹ See the Appendix to this letter.

subject to a number of limitations.² The limits on the exemption that most often apply to personal information about an officer of an agency are clauses 3(3) and 3(6).³

Clause 3(3) provides that information is not exempt merely because its disclosure would reveal ‘prescribed details’ in relation to officers or former officers of an agency. The FOI Act makes a distinction between private information – such as a person’s home address or health details – and information that relates solely to the person’s performance of functions, duties or services for an agency. The type of information that amounts to prescribed details is set out in regulation 9(1) of the *Freedom of Information Regulations 1993* (**the Regulations**).⁴

In effect, the Regulations provide that certain specified work-related information about an officer – even though it is ‘personal information’ as defined in the FOI Act – will not be exempt under clause 3(1). The name of an officer of an agency is a prescribed detail under Regulation 9(1) and on that basis would usually not be exempt personal information under clauses 3(3). Other prescribed details include the position held by an officer and anything done by the officer in the course of performing or purporting to perform their functions or duties as an officer as described in any job description document for the position held by the officer.⁵

Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Accordingly, when personal information about an officer is not ‘prescribed details’, I must consider whether the disclosure of that information would, on balance, be in the public interest and is therefore not exempt under clause 3(1).

Disclosure of names of officers

An example of a decision where the Commissioner has found the names of officers are prescribed details and not exempt under clause 3 is *Re McGowan and Department of the Premier and Cabinet* [2015] WAICmr 3, which concerned documents relating to an inquiry into the conduct of a ministerial officer. In that case, the Commissioner found that the names and job titles of government officers and things done in the course of performing, or purporting to perform, the person’s functions or duties as an officer were prescribed details under clause 3(3) and regulation 9 and were therefore not exempt.⁶

I note that in *Re Seven Network (Operations) Limited and Western Australia Police* [2015] WAICmr 14, which concerned documents relating to traffic infringements issued to senior public officers including Ministers, the Commissioner found that disclosure of the names of the individuals who the traffic infringements were issued to would reveal more than prescribed details, having regard to the context of that information and the details in the documents that had already been disclosed. However, the Commissioner found that it was in

² The exemption in clause 3 is set out in full in the Appendix to this letter.

³ Clause 3(4) operates in a similar way in relation to personal information about a contractor for services

⁴ Regulation 9(1) is set out in full in the Appendix to this letter.

⁵ Regulation 9(2) sets out the information that is prescribed details in relation to a contractor and is set out in full in the Appendix to this letter.

⁶ A summary of that decision, as contained in my office’s FOI Coordinators Manual available at <https://www.oic.wa.gov.au/Materials/FOI%20Coordinators%20Manual.pdf>, is included in the Appendix to this letter.

the public interest for the names to be disclosed and therefore found that information was not exempt.⁷

The Commissioner has found that where the name of an officer in a document indicates a connection with a particular incident, such as a workplace grievance, the disclosure of their name may not ‘merely’ reveal prescribed details: see for example, *Re Van de Klashorst and City of Melville* [2004] WAICmr 14 at [34]. I similarly consider that in cases such as the investigation of a workplace grievance, where the name of an officer in a document is connected to the agency’s investigation, the officer’s name may go beyond the kind of work-related information set out in regulation 9 and may reveal more than prescribed details about that officer.

Disclosure of contact details

In relation to contact details of an officer, my predecessors have found that the direct contact details of an officer, including direct email addresses, direct telephone numbers and mobile telephone numbers, are not prescribed details but that their disclosure would not, on balance, be in the public interest.

In *Re Malik and Office of the Public Sector Standards Commissioner* [2010] WAICmr 25, the Commissioner accepted that, with regard to the direct contact details, including email addresses of officers, there is a public interest in members of the public being able to contact government agencies and officers. However, the Commissioner agreed with the view of the former Commissioner in *Re Mossenson and Others and Kimberley Development Commission* [2006] WAICmr 3 at [38]-[39] that disclosure would not, on balance, be in the public interest.⁸

In *Re Farina and Treasurer* [2011] WAICmr 12, the Commissioner found that direct telephone numbers, including mobile numbers, of officers of an agency are not prescribed details covered by the limit on the exemption in clause 3(3): see [26]. However, the Commissioner found that those contact details were exempt under clause 3(1) because their disclosure would not, on balance, be in the public interest and therefore the limit on the exemption in clause 3(6) did not apply: see [29]-[37].⁹

Disclosure of signatures

In *Re Mossenson and Others and Kimberley Development Commission* [2006] WAICmr 3, the Commissioner found that the handwritten signature of an officer is personal to the individual concerned, that it relates to more than merely the officer’s work as an officer and is not a prescribed detail for the purposes of clause 3(3): see at [24].

In *Re Lazar and Police Force of Western Australia* [1999] WAICmr 29, the former Commissioner made the following comments about the signature of an officer and signatures generally:

⁷ A summary of that decision, as contained in my office’s FOI Coordinators Manual available at <https://www.oic.wa.gov.au/Materials/FOI%20Coordinators%20Manual.pdf>, is included in the Appendix to this letter.

⁸ A summary of the relevant reasons is contained in the Appendix to this letter.

⁹ A summary of those paragraphs is contained in the Appendix to this letter.

Whilst the limit provided by clause 3(3) operates to render not exempt certain information about public officers, I do not consider the limit to apply to an officer's signature. In my view, a signature is personal to the officer and is not within the prescribed details referred to in clause 3(3). As to the personal signatures, I consider those to be personal information of a kind that ought to be protected from disclosure, other than by the author, in the interest of personal privacy. A person's signature is unique to that person who, in my opinion, in the absence of good reason to the contrary, ought to have sole discretion as to its dissemination.

While I agree with my predecessors views as noted above, I consider that there may be cases where the signature of a public officer could be regarded as something done by the officer in the course of performing their functions or duties as an officer and therefore a prescribed detail which is not exempt personal information. For example, in the case of an officer's signature on a patient's medical chart to signify the administration of medication by that officer.

Similarly, even if a signature is not a prescribed detail, in my view, there are also cases where the public interest factors in favour of the disclosure of an officer's signature may outweigh the protection of the privacy of the officer. For example, in the case of a warrant of apprehension and a person has been apprehended pursuant to that warrant, I consider there is a public interest in the public having confidence that the warrant has been properly issued, signed or executed in accordance with the law and such a public interest can largely only be satisfied by the disclosure of an unedited copy of the warrant to show the name, title and signature of the officer third party. When a person's liberty depends in part upon the correct completion of a warrant of apprehension, I consider that there is a strong public interest in the disclosure of the officer's signature on that warrant.

Requirement to consult with officers under section 32

Even when the personal information about an officer in a document amounts to prescribed details and is not exempt under clause 3(1), section 32 of the FOI Act requires an agency to take such steps as are reasonably practicable to obtain the views of the officer as to whether their personal information is exempt under clause 3(1) before disclosing it.¹⁰

This requirement to consult with officers of government agencies is often time consuming, without adding anything towards achieving the objects of the FOI Act. My office has recommended to Parliament in numerous annual reports, including my 2017/2018 annual report at pages 27-28,¹¹ that section 32 be amended to remove the requirement to consult an officer of an agency in respect of the disclosure of personal information about them that consists of prescribed details only. Such an amendment would not prevent an agency from seeking the views of officers where it would still be prudent to do so, for example where the agency considers that disclosure of information to an access applicant may endanger the safety of an officer of an agency.

¹⁰ see my office's publication 'Dealing with personal information about an officer of an agency' at <https://www.oic.wa.gov.au/Materials/FOIProcessGuides/Dealing%20with%20personal%20information%20about%20an%20officer%20of%20an%20agency.pdf>.

¹¹ available at https://www.oic.wa.gov.au/Materials/OIC_AR18.pdf#pagemode=bookmarks

Safety of officers

The FOI Act contains an exemption in clause 5(1)(e) of Schedule 1 which provides that matter is exempt if its disclosure could reasonably be expected to endanger the life or physical safety of a person.

In *Re 'M' and WA Country Health Service – South West* [2012] WAICmr 8¹² the former Commissioner found the names and other identifying information about officers or former officers of a number of agencies exempt under clause 5(1)(e) on the grounds that its disclosure could reasonably be expected to endanger the physical safety of those individuals. In that case, the Commissioner found that the fears that certain individuals had for their safety were reasonably based and there was material before the Commissioner to show that threats had been made to the safety of individuals who had been involved with the complainant at the relevant hospital: see [29].

I trust that the information in this letter is of some assistance. Please do not hesitate to contact me if I can be of further assistance.

I have no objection to this letter being made public.

Yours sincerely



Catherine Fletcher
INFORMATION COMMISSIONER

Enc.

¹² Referred to at page 16 of the OIAC's Discussion Paper

APPENDIX

Clause 3 of Schedule 1 to the Freedom of Information Act 1992 (WA)

3. Personal information

- (1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*
- (2) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.*
- (3) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to -*
 - (a) *the person;*
 - (b) *the person's position or functions as an officer; or*
 - (c) *things done by the person in the course of performing functions as an officer.*
- (4) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to -*
 - (d) *the person;*
 - (e) *the contract; or*
 - (f) *things done by the person in performing services under the contract.*
- (5) *Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.*
- (6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest."*

'Personal information' is defined in the Glossary to the FOI Act to mean:

information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -

- (a) *whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
- (b) *who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.*

Regulations 9(1) and 9(2) of the FOI Regulations

9. Prescribed personal details (Schedule 1 clause 3 of the Act)

- (1) *In relation to a person who is or has been an officer of an agency, details of—*
- (a) the person's name;*
 - (b) any qualifications held by the person relevant to the person's position in the agency;*
 - (c) the position held by the person in the agency;*
 - (d) the functions and duties of the person, as described in any job description document for the position held by the person; or*
 - (e) anything done by the person in the course of performing or purporting to perform the person's functions or duties as an officer as described in any job description document for the position held by the person,*

are prescribed details for the purposes of Schedule 1, clause 3(3) of the Act.

- (2) *In relation to a person who performs or has performed services for an agency under a contract for services, details of—*
- (a) the person's name;*
 - (b) any qualifications held by the person relevant to the person's position or the services provided or to be provided pursuant to the contract;*
 - (c) the title of the position set out in the contract;*
 - (d) the nature of services to be provided and described in the contract;*
 - (e) the functions and duties of the position or the details of the services to be provided under the contract, as described in the contract or otherwise conveyed to the person pursuant to the contract; or*
 - (f) anything done by the person in the course of performing or purporting to perform the person's functions or duties or services, as described in the contract or otherwise conveyed to the person pursuant to the contract,*

are prescribed details for the purposes of Schedule 1, clause 3(4) of the Act.

Documents relating to traffic infringements issued to senior public officers including Ministers

Re Seven Network (Operations) Limited and Western Australia Police [2015] WAICmr 14

The complainant applied to the agency for access to documents relating to traffic infringements or parking fines involving government vehicles assigned to certain senior public office holders including Ministers. The agency gave the complainant access to an edited copy of each of the documents located. The disputed information was the name of the person in the address line of each traffic infringement, which the agency deleted on the basis it was personal information and exempt under clause 3(1) of Schedule 1 to the FOI Act.

The Commissioner accepted that the disputed information is personal information which is, on its face, exempt under clause 3(1). The Commissioner considered that the only limits on the exemption that were relevant in this matter were clauses 3(3), 3(5) and 3(6).

The Commissioner was of the view that, having regard to the context of the disputed information and the details in the traffic infringements already disclosed, the disputed information would reveal more than prescribed details. As a result, the Commissioner considered that clause 3(3) did not operate to limit the exemption in clause 3(1) in this case.

The Commissioner was also of the view that the limit on the exemption in clause 3(5) applies where there is evidence that an individual consents to the disclosure of their personal information. As two of the persons named in the traffic infringements advised the Commissioner that they consented to disclosure of their personal information, the Commissioner found that the limit in 3(5) applied to that information and it was not exempt under clause 3(1).

In determining whether disclosure of the disputed information would, on balance, be in the public interest, the Commissioner recognised that there is a strong public interest in maintaining personal privacy. The Commissioner was of the view that election to office or appointment as a Minister, or appointment to a senior public office, does not mean that the office holder forfeits the right to privacy.

In favour of disclosure, the Commissioner considered that there is a public interest in senior government officers being accountable, and being seen to be accountable, for acting in accordance with the law. The Commissioner also considered that the objects of the FOI Act and the Ministerial Code of Conduct reflect a public interest in Ministers being individually accountable to the public for acting in accordance with the law, particularly when they are using publicly funded resources. The Commissioner was also of the view that senior public officers who are provided vehicles at expense to the taxpayer should be accountable to the public for their use of publicly funded resources.

The Commissioner concluded that the public interest factors in favour of disclosure outweighed the public interest factors against disclosure and that the limit on exemption in clause 3(6) applied. The Commissioner found that the disputed information was not exempt under clause 3(1) and set aside the agency's decision.

Documents relating to an inquiry into the conduct of a ministerial officer

Re McGowan and Department of the Premier and Cabinet [2015] WAICmr 3

The Information Commissioner found documents relating to an inquiry into the conduct of a ministerial officer were not exempt under clauses 3(1) or 11(1)(c) of Schedule 1 to the FOI Act as claimed by the agency.

On external review the complainant advised that he did not seek access to any information in the documents that related to the health and wellbeing of Government officers or certain other information about officers including their direct contact details. Accordingly, information of that kind was outside the scope of the complaint.

The Commissioner found that all the remaining personal information in the documents consisted of prescribed details about officers of an agency which was not exempt under clause 3(1) by virtue of the limit on the exemption in clause 3(3). The Commissioner also considered that there was evidence that a number of the third parties had consented to disclosure of edited copies of the documents and that, as a result, the limit on exemption in clause 3(5) applied to the personal information about those third parties contained in the documents.

In considering the public interest factors for and against disclosure of the documents, the Commissioner acknowledged that there was a strong public interest in protecting personal privacy and considered that the matter turned on whether that public interest was outweighed by the public interest factors in favour of disclosure.

The Commissioner noted that the documents concerned an investigation undertaken at the most senior levels by a key central government agency into the conduct of other senior government officers following events which related to a former Minister. The Commissioner was of the view that the strong public interest in ensuring that such investigations are conducted fairly, robustly and with integrity would be furthered by disclosure of the documents in this case.

The Commissioner considered that the weight of the public interest factors against disclosure was somewhat lessened in the particular circumstances of this matter because the documents concerned the actions of senior current or former public officers in influential positions. The Commissioner concluded that disclosure of the documents would, on balance, be in the public interest pursuant to clause 3(6) and found that the documents were not exempt under clause 3(1).

Further, the Commissioner was not satisfied on the evidence before him that disclosure of the documents could reasonably be expected to have a substantial adverse effect on the agency's management or assessment of its personnel and found that the documents were not exempt under clause 11(1)(c). The Commissioner was not persuaded by the agency's claim that public servants' willingness to co-operate with inquiries would substantially be compromised if the documents were disclosed. The Commissioner considered that the agency's claim that public officers would be reluctant to provide information in the future was inconsistent with the standards and values contained in the public sector code of ethics and code of conduct which apply to officers in such positions.

Disclosure of email addresses

Re Mossenson and Others and Kimberley Development Commission [2006] WAICmr 3

The Commissioner found that the direct email addresses of particular officers are prescribed details as described in regulation 9(1) of the Regulations and that the limit in clause 3(3) did not apply to those email addresses: see [25].

In considering whether disclosure of those email addresses was in the public interest, the Commissioner noted the public interest in members of the public - and, in particular, members of the public transacting business of some kind with the government - being able to contact agencies and relevant officers. However, the Commissioner did not consider that public interest required that members of the public have the direct contact details of officers, unless those officers - or the agency concerned as a matter of policy - choose to provide them.

Weighing against disclosure, the Commissioner recognised the public interest in public officers being able to manage their work so that they can discharge their duties in an efficient and effective manner. Given that the telephone directory, both in hard copy and online, provides telephone numbers and a website address for the agency, and given that its website contains an email address for the agency as well as a form by which people can contact the agency by email, the Commissioner did not consider that the public interests in the accessibility of agencies and their officers require the disclosure of the officers' individual email addresses. Therefore, the Commissioner found that the email addresses were exempt under clause 3(1).

Disclosure of direct work telephone numbers

Re Farina and Treasurer [2011] WAICmr 12

The disputed information consisted of the direct work telephone number of an officer of an agency.

The Commissioner was of the opinion that, although information of that kind relates to the work of the officer rather than his or her personal life, that information is nonetheless personal information as defined in the FOI Act and its disclosure would reveal more than the prescribed details listed in the Regulations. Accordingly, the Commissioner noted that information of that type is not covered by the limit on exemption in clause 3(3): see [26].

The Commissioner then considered whether disclosure of the telephone number would, on balance, be in the public interest, in which case it would not be exempt personal information about the officer.

In favour of disclosure, the Commissioner recognised a public interest in members of the public transacting business with the government being able to contact agencies and relevant officers. However, the Commissioner did not consider that that public interest always requires that members of the public have the direct work telephone numbers, including mobile phone numbers – as opposed to the general office telephone number, of officers, unless those officers – or the agency concerned as a matter of policy – choose to provide them by, for example, handing out a business card.

The Commissioner did not accept the complainant's submission in that case that direct work telephone numbers of officers are already in the public domain by virtue of them being recorded on government business cards or in external correspondence, noting that it is not government policy to require officers to disclose their direct and mobile telephone numbers on business cards or in correspondence with the public and officers have discretion to do so.

While acknowledging that agencies or public officers may choose to make their direct phone numbers, the Commissioner was not persuaded that there is a public interest in that information being disclosed without the consent or knowledge of the relevant officers. The Commissioner was of the view that there is a strong public interest in protecting the personal privacy of individuals as recognised by the limited range of work-related information that is counted as 'prescribed details'.

The Commissioner expressed the opinion that there are a number of practical reasons why a government officer might not choose to be contacted directly by members of the public, provided that members of the public are adequately informed of agency functions and services, and are able to contact relevant functional areas through published contact details. While recognising a public interest in government agencies, including ministers, being accountable to the public for the manner in which telephone services paid by the public purse are used, the Commissioner did not consider that public interest requires the disclosure of direct work telephone or mobile numbers of government officers.

Although the Commissioner agreed that it may be more time efficient for officers not to have to delete direct work telephone numbers from documents when dealing with an access application, he did not consider that outweighs the public interest in the privacy of individuals. Given that the telephone directory, both in hard copy and online, provides telephone numbers for direct access to government agencies, the Commissioner did not consider that the public interest in the accessibility of agencies and their officers requires the disclosure of officers' direct work telephone numbers including mobile phone numbers. The Commissioner concluded that disclosure of the telephone number would not, on balance, be in the public interest.