

IN FACT



Information Act newsletter

Freedom of Information and Privacy Protection in the NT Public Sector

Issue 7 - June 2008

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You may think you are anonymous online, but you always leave behind electronic tracks

Staffing matters in the Office of the Information Commissioner



This issue we say both hello and goodbye to Donna Ward, who joined the team as a part-time Legal Research Officer on a 3-month temporary contract. Donna is a full time Law student in her final year. She is pictured here receiving one of her two prizes awarded this year at the Supreme Court for achieving academic excellence. We would like to thank Donna for her hard work while working with this office.

Barbara Pedersen of this office came first in the Ethnic solo dance in the Open Section at the 2008 Eisteddfod.





From the Commissioner's Desk

In Queensland this month, Dr David Solomon AM, Chair of the Independent Review Panel, presented his *Review of the Queensland Information Act* to the State Government. The Report recommends major changes for government processes to be structured to routinely and pro-actively release information, making FOI laws a last resort. The changes have received broad support from Premier Anna Bligh. Some of the recommendations include:

- The Premier and Director-General of the Department of Premier and Cabinet should publicly, as well as by formal memorandum, endorse the principles of FOI and express their desire that agencies comply with the objects of the Act;
- Moving from a 30 year Cabinet rule to a 10 year rule;
- FOI should be extended to cover private organisations that have a contract to perform functions that were once provided by government to the extent of these functions;
- A change to the public interest test to provide that access is to be provided unless its disclosure, on balance, would be contrary to the public interest;
- The Information Commissioner should produce guidelines to assist consistency in the production and management of Schedules;
- The Information Commissioner should have the power to report on complaints about the way an agency deals with applications, including timeliness, and should have the power to conduct own-motion inquiries in relation to this;
- FOI should be recognised as part of the mainstream functions of agencies and superior performance by officers should merit special recognition;
- The ground for declaring a person vexatious should be extended;
- Chief Executive Officers should ensure that Information Officers have the seniority and appropriate expertise for the task;
- Cabinet decisions, submissions, and briefing notes, whether final or in draft form, should be exempt documents;
- It should be an offence for an officer to direct a decision maker to make a decision that the decision maker believes is not the decision required under the Act. If the Chief Executive Officer believes the decision maker is going to make the wrong decision, the Chief Executive Officer should make the decision.

More on the review can be found on page 3 of this newsletter.

The Australian Law Reform Commission (ALRC) has recently completed its *Review of Australian Privacy Law*, which was presented to the Attorney-General on 30 May 2008, but has not yet been publicly released. The Attorney-General must table the review in Parliament before the end of August 2008.

The ALRC is also continuing its inquiry into FOI laws and practices across Australia. The inquiry is considering relevant Federal, State and Territory laws, as well as considering how these laws might be improved. The ALRC is required to consider whether there is any need to harmonise these laws, so that FOI requirements and practices are consistent across the various jurisdictions. Other matters include the impact of evolving technology in relation to production and storage of information, how other countries approach access to information, and any constitutional issues that may affect a potential harmonisation of FOI laws. The final report is due on 31 December 2008 with a Discussion Paper due in mid to late 2008.

Decision of the Information Commissioner

On 25 March 2008, the OIC handed down its first decision in the matter of *Collie v Office of the Commissioner for Public Employment* (OCPE). The complainant requested access to the report, which was prepared by an external consultant relating to his investigation and review of her grievance lodged under section 59 of the *Public Sector Employment and Management Act* (PSEMA). Initially, the request was refused by the OCPE on the grounds that the information was exempt pursuant to section 52 (Deliberative Processes) and 55(3) (Information communicated in confidence to a public sector organisation). The OCPE later asserted that all information requested by the complainant was exempt by virtue of section 5(5)(b) of the Act (A tribunal in relation to its decision-making functions). It claimed that the Act does not apply in relation to the decision-making functions of the Promotions Appeal Board or the Commissioner for Public Employment when determining grievances pursuant to section 59 of PSEMA. It also added that in addition to being exempt under sections 52 and 55(3), the information was also exempt under 53(c) of the Act (Disclosure is reasonably likely to have a substantial, adverse effect on the management of a public sector organisation).

I concluded that whether the document was exempt turned on whether a quasi-judicial decision-making process was adopted in this case or whether there were sufficient trappings of power indicative of a tribunal. I concluded that in this case the decision-making functions of the Commissioner for Public Employment lacked almost any characteristics that could mark it as quasi-judicial.

I found that:

- none of the information was exempt by virtue of section 5(5)(b);
- the document revealed deliberative processes but disclosure would be in the public interest, therefore none of the information was exempt by virtue of section 52; and
- none of the information was exempt by virtue of sections 53(c) or 55(3).

I ordered that the OCPE provide a copy of the report to the Complainant. The decision is published on the OIC website.

Spreading the word about FOI & Privacy

**Freedom of Information
and Privacy**

It's for everyone...
don't leave it to chance!

**Office of the
Information Commissioner**

Providing guidance on
obtaining government and
personal information (FOI) and protecting your
privacy

Call us for more details
1800 005 610 or (08) 8999 1500
or visit our website www.infocomm.nt.gov.au

**Sponsoring
Privacy
Awareness Week**





The Office of the Information Commissioner recently conducted an advertising campaign in order to raise awareness about FOI and privacy, particularly in remote communities. The advertisement (left) appeared in the NT News, Darwin/Palmerston Sun, Katherine Times, Tennant & District Times, the Centralian Advocate and will appear in the Territory Regional Weekly on Friday, 4 July.

The advertisements appear to have created an interest, as we have had an increased number of calls, asking for information about FOI and/or Privacy.

ZOE MARCHAM
Acting Information Commissioner

Queensland Government Freedom of Information Review

On 10 June 2008 the Queensland premier, the Honourable Anna Bligh MP, publicly released the report of the FOI Independent Review Panel, *The Right to Information*.

The report recommends 141 changes to the existing Queensland FOI laws. Former journalist and barrister David Solomon, who is also a member of the Australian Law Reform Commission's national review of FOI laws, prepared the 400-page report. If Queensland accepts the recommendations, the state will probably become a world leader in providing access to government information.

The report recommends sweeping changes to Queensland Laws, ensuring secrecy is only an option where it is absolutely needed.

The Queensland Government was recently criticised for having an alleged culture of secrecy, which was highlighted during the Jayant Patel scandal. A report into Queensland's public hospitals found "[t]his culture started at the top with successive governments using the FOI Act to enable potentially embarrassing information to be concealed from the public".

The new model recommends that FOI laws are a last resort and government processes are structured to routinely and pro-actively release information.

University of Tasmania senior law lecturer, Rick Snell, said if implemented, the changes will fundamentally transform Qld from defaulting towards secrecy to virtually always defaulting towards openness. He continued that the report, if adopted, would benefit not only the Government but also the public service in general, the media, and the public. It will move Queensland to the forefront of FOI legislation in Australia and it will also move to the forefront of FOI within the world because these proposals give a

blueprint on how to move FOI into the next generation, he said.

One of the key recommendations is to charge the public interest test to ensure that information is released unless its disclosure is deemed to be contrary to the public interest.

Mr Snell says this is a major shift. "What this proposal does is actually put it up front and says there is a basic public interest in releasing information unless there is a very good reason not to".

FOI activist Peter Timmins has also welcomed the report, saying it represents healthy new thinking. "It takes FOI out of a sort of legal battle and very clearly advocates the idea that government should have a policy of openness and transparency," he said. "And I think its recommendations would illustrate, if they are picked up, how that sort of system could work more effectively than what we have had so far".

The Queensland Government plans to have a new *Right to Information Act* before Parliament next year.

Premier Bligh said she was comfortable with the recommended changes to cabinet exemptions, which in theory would allow the release of more documents. "What has been delivered to government is a plan that, I think, finds the right balance between the legitimate privacy of our citizens, the public interest, and effective government," Ms Bligh said.

Other recommendations include new information technology systems to be used to record, track and release documents throughout government, and favouring a culture of transparency in third party organisations that receive taxpayers' funds, such as parliament, government-owned corporations and private schools.

While Ms Bligh vowed to consult widely with third parties who might be affected by such reforms, she said, "by and large the recommendations in my view have merit and ultimately the Government will pick them up".

With thanks to ABC News

New Website!

The Office of the Information Commissioner is getting a new look, in the form of a new website to be launched on 1 August 2008.

The new site is fresh and user friendly, containing vital information for both the public and public sector organisations, about issues of Freedom of Information, privacy, and correcting personal information.

A new feature of the site will be a section aimed at informing youth of their privacy rights and responsibilities.

Please check out the site at www.infocomm.nt.gov.au, available in test-mode from 7 July 2008, and provide your comments and suggestions.

OFFICE OF THE INFORMATION COMMISSIONER Northern Territory

Publications & Decisions
Correcting Information
Privacy
Complaints & Appeals
Freedom of Information

Decisions and case notes
Guidelines
Information Statement
Privacy Policy
Annual Reports

Who We Are

The Information Commissioner is the independent officer appointed to oversee the Freedom of Information and Privacy provisions of the Information Act.

What We Do

The functions of the Office of the Information Commissioner relate to Northern Territory public sector organisations, including local government. We do not cover Commonwealth organisations or the private sector.

Our Role

The two main functions of the Information Commissioner are to:

- Promote understanding and awareness of FOI and Privacy in the community and the public sector;
- Deal with complaints about breaches of privacy and about FOI decisions made by public sector organisations (from 1 July 2004).

Search for Travel Information about the Northern Territory?

Young People: Student Resources

Do you wish to lodge a FOI application?

Forms

FAQ

Feedback

Photo Gallery

Links

Office News

- On Monday 2 June, the Department of Justice CEO, Greg Shanahan, joined staff at the Office of the Information Commissioner for one of our staff meetings. This was a great opportunity to keep Greg informed about some of the work that we are currently doing.
- On Thursday 26 June, an Information Officers' forum was held, with 16 people attending from various agencies. Topics discussed included responding to privacy breaches, new sufficiency of search guidelines, review of the *Information Act* (NT), Queensland's *Freedom of Information Act* review and the Privacy Awards. Minutes are available from this office. Thanks to Colleen Atkinson and Elizabeth Clark for their presentations on 'Your Health and Privacy', and Trim Database reporting requirement updates respectively.

Some recent privacy case notes you may wish to check out: *F v Australian Government Agency* [2008] PrivCmrA 6 and *Complainant AF v Local Council* [2007] VPrivCmr 1. The complainant alleged that a local council failed to give notice of the purpose for which information was collected and discussed personal information for a purpose unrelated to the primary purpose of collection.

F v Australian Government Agency involved a government agency failure to keep personal information secure, relating to Information Privacy Principles 4 and 10 in Part III Division 2 of the *Privacy Act* 1988 (Cth). See <http://www.privacy.gov.au/act/casenotes/2008.html> for a full list of current privacy case notes.

Complainant AF v Local Council related to Victorian IPP 1 (Collection of personal information) and 2 (use and disclosure of personal information). The Victorian Privacy Commissioner's site is at www.privacy.vic.gov.au/dir100/privweb.nsf.

Young people and privacy

Recently the Swedish Data Inspection Board (SDIB) commissioned a study on *Young People and Privacy*, with some startling results, especially when it came to internet usage. Surprisingly, awareness of the risks involved with internet usage does not change young people's behaviour when it comes to revealing private information, valuing unlimited use of the net above privacy.

According to the study, half of all young people have been subjected to someone lying or writing unfair things about them. Every fifth young person has experienced someone else using his or her identity on the Internet. Regardless of the danger however, young people tend to expose themselves on the internet in a manner that would be unthinkable in real life.

One 18-year-old male interviewed was adamant when he said, "you may not print my surname, only my first name. It's a matter of integrity". This same young man has a My Space page not only providing his surname, but also a large amount of other personal information to the general public.

"It is alarming and disquieting that young people have been offended on the internet to the large extent indicated in the survey," says Goran Graslund, Director General for SDIB. Young people do not seem to consider that imprudence with personal information today can potentially be devastating in the future.

The majority of young people surveyed stated that parents have very poor insight into their children's activities. Compounding the situation, more young people are consciously concealing their internet activities from their parents.

The young people surveyed were aged between 14 and 18 years of age.

With thanks to SDIB

In the same vein, the Norwegian Directorate for Education and Training together with the Norwegian Board of Technology produced a brochure aimed at secondary school students titled '*You decide ... thoughts and facts about protecting your personal data*'.

The information contained in the brochure applies worldwide and is a must for young people to read.

Some of the information contained in the brochure includes:

- use of personal data;
- the consequences of uploading private images onto the net;
- information on digital bullying;
- information on identity theft; and
- online interaction games like "World of Warcraft".

The brochure can be downloaded from www.dubestemmer.no.



International Freedom of Information news

Europe

The Council of Europe's meeting of the Steering Committee for Human Rights (CDDH) on Wednesday 26 March 2008 adopted the draft text of the proposed *Convention on Access to Official Documents* without incorporating any of the changes proposed by the Slovenian government which were supported by 10 Information Commissioners and substantially reflected the proposals made by Civil Society.

A shocking development was the introduction of an exception to exclude Heads of State from the scope of the right to information by extending the optional blanket exception for Royal households to the heads of state.

Civil Society Groups participating in the process expressed their profound disappointment that the opportunity had not been taken by the CDDH to establish a full definition of the right of access to information that obliges all branches of the state and guarantees a binding appeal procedure.

Concerns were raised that, by defining the right of access to information narrowly, the Convention could actually have the pernicious effect of reducing the level of access already enjoyed in many Council of Europe member states that have access to information laws.

With thanks to www.freedominfo.org

United States

In the United States the first *Freedom of Information Act* (FOIA) reform Bill in more than a decade has become law when President Bush signed the landmark reform legislation.

The law, which passed both houses of Congress in December 2007 with bipartisan support after several years of negotiation, aims to fix some of the most persistent problems in the FOIA system, including excessive delay, lack of responsiveness, and litigation gamesmanship by federal agencies.

Federal agencies for the first time will face penalties when they do not respond to FOIA requests within the 20-day statutory limit – for these requests, the agencies will be unable to collect some processing fees. It is unclear, however, how this provision will actually be implemented because agencies may still delay when certain “unusual” or “exceptional” circumstances prevent them from processing requests on time. The new law also mandates tracking systems to ensure that requests are not lost and to allow applicants to check on the status of their requests at any time. In addition to tracking numbers, agencies will also be required to provide applicants with an estimated date for completion of the request, which may reduce some of the uncertainty for applicants who now wait months, years, or even decades for a response.

With thanks to www.freedominfo.org

30th Annual International Conference of Data Protection and Privacy Commissioners

The 30th Annual Data Protection and Privacy Conference will be held in Strasbourg in Europe, from 15 to 17 October 2008. It will be built on the theme of “protecting Privacy in a borderless world”.

The aim is to identify major challenges arising from the fact that privacy in an international context is subject to powerful technological, political, legal

and economic developments.

Representatives of the public sector, the supervisory bodies, companies, consumer associations and those that defend liberties will thus have a chance to debate their concerns and their concepts of the protection of privacy.

This conference, held annually, brings together 78 data protection authorities and privacy commissioners from every continent.

Recent Australian decisions

VICTORIA

State of Victoria and Anor v Nine Network Australia Pty Ltd [2007] VSC 514

This recent decision, which was handed down in the Victorian Supreme Court, arose from a serious privacy breach where files containing sensitive information were left in the drawer of a filing cabinet which was then sold to a second hand dealer during a move of a Government Department offices. The dealer subsequently sold the drawers onto a private individual who discovered the files and sold them to Channel 9. The Department took immediate action in the Supreme Court in the form of an injunction in an attempt to contain the privacy breach, to restrain Channel 9 from publishing the file contents. This resulted in a permanent order preventing the disclosure of the potentially damaging personal information, and all copies, CD's and tapes of proposed programs divulging the information were ordered to be destroyed.

QUEENSLAND

HAB and Queensland Health (20 May 2008)

The applicant sought access to clinical records concerning treatment for a specified period in which he was a resident of an Adolescent Unit. Qld Health refused access in full under s42 (1) (c) of the *FOI Act* on the basis that disclosure could reasonably be expected to endanger a person's life and physical safety, which was upheld on internal review by Qld Health.

On external review Asst Commissioner Corby varied the Qld Health decision by finding a proportion of the documents sought were outside the scope of the FOI application as they were not clinical records regarding the applicant's specified period of treatment.

Asst Commissioner Corby further used the principles outlined in *Murphy and Qld Treasury* (1995) QAR 744, objectively evaluating the evidence and finding that documents that did fall within the scope of the application were qualified for exemption under section 41 (1) (c).

Interesting Privacy snippets

There have been recent calls by Californian Assembly member Joel Anderson for internet surf giant Google.com to comply with Californian privacy laws by placing a prominent link on its homepage to link to its privacy policy.

The *Californian Online Privacy Protection Act* requires operators of commercial websites that collect personally identifiable information to "conspicuously post" a link on their homepage to their privacy policy.

Meanwhile the Canadian Internet Policy and Public Interest Clinic (CIPPIC) have filed a privacy complaint against social networking site "Facebook" with the

Canadian Privacy Commissioner regarding unnecessary and non-consensual collection and use of personal information. CIPPIC is accusing Facebook of violating Canadian privacy laws as set by the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

The complaint alleges that Facebook places unnecessary conditions on its access by asking users to consent to information collection, collects information by deceptive practice, gives third parties more access to their users information than is necessary, and has lax security.

Facebook claims to have granular control over its privacy settings, but CIPPIC believes this claim is deceptive and suspect.

Responding to Privacy breaches

In April this year, the Office of the Australian Privacy Commissioner released draft a Voluntary Information Security Breach Notification Guide for a two-month consultation period. The paper follows a similar approach taken in Canada and New Zealand and proposes four key steps to consider when responding to a breach or suspected breach:

- contain the breach and do a preliminary assessment;
- evaluate the risks associated with the breach;
- consider notification; and
- prevent future breaches.

In May, the Office of the Victorian Privacy Commissioner published “*Responding to privacy breaches: Guide and Checklist*”. Again the Checklist and Guide are similar to those produced in Canada and New Zealand and are intended to be consistent with them as far as possible.

Copies of the Victorian checklist were distributed to Information Officers at the June Forum. It is important that Information Officers read the checklist so they will know what to do should a breach of privacy occur in their organisation. Please see the website for more details: <http://www.privacy.gov.au/> or please contact this office if you would like more information.

Reminders

Don't forget that section 11 of the *Information Act* requires all agencies to publish at least once a calendar year the following information:

- a description of the structure and functions of the agency;
- a description of the kinds of government information usually held by that agency;
- a description of the organisations procedures for providing access to government information under Part 3; and
- a description of the organisation's procedures for correcting personal information held by the organisation.

For further information, either please consult the relevant section of the Act or contact this office.

Don't forget the training sessions by Megan Carter on the *Information Act* from 14 - 16 July 2008! Please contact this office for more information.

Finally a reminder that all Information Officers are to submit their annual statistical returns by 18 July 2008 – please send your responses via email to helmy.bakermans@nt.gov.au or infocomm@nt.gov.au or via mail to GPO Box 3750 Darwin NT 0801 or via fax to 8981 3812. Section 98 of the *Information Act* requires the Information Commissioner to include these statistics in her report to the Minister.



New Guidelines

The Office of the Information Commissioner is currently developing guidelines on Sufficiency of Search.

A Sufficiency of Search issue may arise if an FOI applicant believes that the relevant public sector organisation (PSO) has not completed a search that was sufficient to locate all of the documents falling within the terms of his or her application. This includes where files have been transferred to another PSO.

In all complaints of (in)sufficiency of search, the applicant needs to contact the relevant PSO to request a review for further searches.

The PSO has an obligation under the *Information Act* to take all reasonable steps in the circumstances to ensure that the records requested are found and must have in place adequate search and identification procedures and guidelines to do so.

A guideline is also being developed for Search Declarations, which will complement the Sufficiency of Search information.

THINGS TO REMEMBER

THE OFFICE OF THE INFORMATION COMMISSIONER'S

Reading Room

at Level 7, 9-11 Cavenagh St.
is available for your use

Come and check out our resources!

**Being online doesn't mean you are alone
– always be aware of what information
you give out over the internet – you never
know who is watching**

HANDY LINKS:

- Commonwealth Attorney-General Freedom of Information page www.ag.gov.au/foi
- NSW Ombudsman www.nswombudsman.nsw.gov.au
- Office of the Information Commissioner Queensland www.oic.qld.gov.au
- South Australian Ombudsman www.ombudsman.sa.gov.au
- Tasmania Ombudsman www.ombudsman.tas.gov.au/freedom_of_informaiton
- Victorian Freedom of Information online www.foi.vic.gov.au
- Western Australia Information Commissioner www.foi.wa.gov.au



Privacy doesn't matter until it does

Did you know?

On 9 April, the Office of the Privacy Commissioner launched the inaugural Privacy Awards program and Australian Privacy Medal.

The Awards will be presented in four categories:

- Corporate and Large Business Award (for business with 100+ employees)
- Microsoft Small-Medium Business Award (for businesses with less than 100 employees, including those not covered by the *Privacy Act*)
- Symantec Government Award (for any government agency at a national, state or local level)
- Community and NGO Award (for any not-for-profit organisation, such as charities NGO's, industry bodies, advocacy organisations, and social, cultural, sporting or community groups.

A Grand Award will be presented to the most outstanding entrant.

The Medal is aimed at acknowledging an individual who has displayed an outstanding level of achievement in the privacy field in Australia. The nomination period for the Awards and the Medal runs to 9 July 2008. The applications will be judged by a panel of professionals and chaired by the Australian Privacy Commissioner. The Awards and Medal will be presented at a Gala Dinner to be held on 27 August in Sydney (during Privacy Awareness Week – see p 12).

The OIC has written to all NT agencies encouraging them to enter.

www.privacy.gov.au/about/awards gives detailed information about the awards.



Asia Pacific Privacy Authorities Forum

The 29th Asia Pacific Privacy Authorities (APPA) Forum was held in Seoul, South Korea, from 19 – 20 June 2008.

In attendance were Privacy Commissioners and representatives of Canada, Hong Kong, Korea, New Zealand, Australia and Victoria, as well as observers from the French Data Protection Authority (CNIL) and the Office for Personal Data Protection, Macao.

Under the over-arching theme of the future of the internet economy, the APPA Forum is a venue to facilitate cooperation and information exchange among privacy authorities in the Asia-Pacific region so as to enable them to jointly respond to privacy leaks and share privacy-related laws and best practices.

For more information, see the website www.appa2008.co.kr

Privacy Awareness Week (PAW) 2008 is from 24 to 31 August

PAW really is a fantastic opportunity to promote privacy and the NT Office of the Information Commissioner will be organising a get-together to mark the event. We hope that this year is even bigger and better than last year and invite you to create as much additional awareness as you can. PAW is organised by the Federal Privacy Commissioner and Privacy Commissioners from the Northern Territory, Victoria, New South Wales, Hong Kong, New Zealand, Canada and Korea. The theme this year is again, "Privacy is your business".

In today's technological society, privacy is particularly relevant to young people as one of the main user groups of social networking sites. A highlight for PAW this year is a competition for secondary school students to create and submit a 2-minute video about privacy and what it means to them, with fantastic prizes on offer.

The competition closes on 25 July 2008 and the PAW 2008 website provides the details: <http://www.privacyawarenessweek.org/paw/>. (While you are there, check out last year's competition under the Archives tag.)

PAW was launched in Melbourne on Monday 5 May 2008 at Brighton Secondary College, the school where Summer Heights High was filmed. The launch was very successful, with

PAW 2008 POSTER



students from Thornbury High School contributing an 8-minute promo video, which will be loaded onto *Classnet* in due course. *Classnet* is a website ready to accept the Australian competition entries as they are submitted: see <http://www.classnet.com.au/>.



YOUR SAY

Please give us feedback about:

What you think of our **IN FACT** Newsletter

Which items you would like to see featured

Which contribution you would like to make to the next edition of **IN FACT**

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