

Can they get that personal information under FOI?

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Outline

Unravelling personal information under the FOI Act

- What is personal information?
- What is the scope of the application?
- Is the requested personal information exempt?
- Is it more complicated than that?



What is personal information

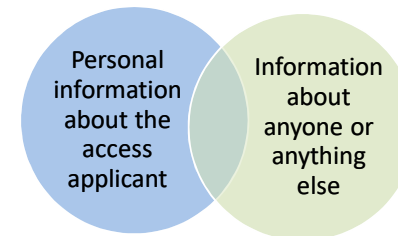
information or an opinion, whether true or not, and recorded in a material form or not, about an individual, whether living or dead:

a) whose identity is apparent or can reasonably be ascertained from the information or opinion; ...

(from the Glossary to the FOI Act)

Have they asked for personal information?

- What is the scope of the access application?



Application for personal information only

Personal information about the access applicant

Information about anyone or anything else

A request for everything?

Personal information about the access applicant

Information about anyone or anything else

Talk with the applicant – do they really want everything? Can some things be excluded

Eg:

- personal information about private individuals
- personal information about officers for the agency
- Information you have already been given by the agency

Clause 3(1)

- Clause 3(1) of Schedule 1 to the FOI Act
Matter is exempt if its disclosure would reveal personal information about an individual (whether living or dead).

UNLESS

...

Clause 3(1) and (2)

- Clause 3(1) of Schedule 1 to the FOI Act
Matter is exempt if its disclosure would reveal personal information about an individual (whether living or dead).

UNLESS

(2) it would merely reveal personal information about the applicant.

Clause 3(1), (3) and (4)

- Clause 3(1) of Schedule 1 to the FOI Act
Matter is exempt if its disclosure would reveal personal information about an individual (whether living or dead).
UNLESS
(3) and (4) disclosure would merely reveal prescribed details about an officer of an agency or a person who performs services for an agency under a contract for services.

Clause 3(1) and (5)

- Clause 3(1) of Schedule 1 to the FOI Act
Matter is exempt if its disclosure would reveal personal information about an individual (whether living or dead).
UNLESS
(5) the applicant provides evidence that the third party consents.

Clause 3(1) and (6)

- Clause 3(1) of Schedule 1 to the FOI Act
Matter is exempt if its disclosure would reveal personal information about an individual (whether living or dead).
UNLESS
(6) disclosure would, on balance, be in the public interest.

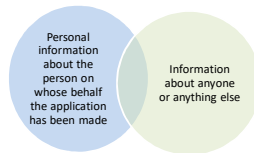
Case study

Re K and the City of Canning and L [\[2012\] WAICmr 3](#)

- Application for documents relating to the travel expense claims of a local government councillor.

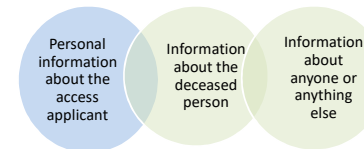
Complications?

- The person applying is applying 'on behalf of' someone else.
Section 98 – *Without limiting the ability of persons to make applications on behalf of other persons ...*
- If you are satisfied that the application is 'on behalf of'



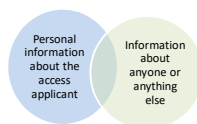
Complications?

- The personal information is about a deceased person - the deceased person is not the applicant.



Complications?

- What about the closest relative?
May be relevant to the public interest.
If disclosing the personal information about a deceased third party, consider clause 32(2).



Case Study

U and Department of Health [\[2010\] WAICmr 3](#)

- Application for medical information relating to the applicant's deceased wife who had been under the clinical care of certain health service agencies at the time of her death.

If giving access to personal information

- If giving the applicant their own personal information – the agency must take reasonable steps to be satisfied of the identity of the applicant (section 29).
- If proposing to give access to personal information of a third party – the agency must take such steps as are reasonably practicable to seek the views of the third party about whether the information is exempt under clause 3 (section 32).
- If a third party claims the information is exempt under clause 3 - make a decision but defer giving access until the third party's review rights have expired (section 34).

So – can they have that personal information under the FOI Act?

- It depends – what is the scope? – can the scope be reduced?
- Do any of the limitations on the clause 3(1) exemption apply?
- Complications – go back to the Act and think where you are in the process.
- If you propose to give access to a third party's personal information don't forget section 32 and 34.

Discussion