



Office of the
**Information
Commissioner**
Western Australia

Dealing with requests for documents related to an ‘exempt agency’

FOI process guide

Dealing with requests for documents related to an ‘exempt agency’

FOI process guide

An access application may include a request for documents relating to an ‘exempt agency’ as listed in [Schedule 2](#) to the *Freedom of Information Act 1992* (WA) (**the FOI Act**).

The fact that a document relates to, or originated from, an exempt agency does not necessarily mean the document is an exempt document under the FOI Act. If an agency holds a document relating to an exempt agency, the document is still a document of the agency. An agency is required to make a decision regarding access to that document in accordance with the FOI Act.

What is an exempt agency?

The Glossary to the FOI Act provides an exempt agency is a person or body mentioned in Schedule 2 to the FOI Act and includes staff under the control of the person or body.

An access application cannot be made directly to an exempt agency under the FOI Act.

The requirement to notify the exempt agency

If the requested documents originated with or were received from an exempt agency, an agency has to notify the exempt agency the access application has been made ([section 15\(8\)](#)).

The purpose of the notification is to obtain the benefit of the exempt agency’s views as to the status of the requested document and whether there would be any harm in disclosing the documents. However, section 15(8) does not give an exempt agency a right to veto giving access to a document.

An exempt agency is not a third party for the purposes of the consultation provisions of the FOI Act.

Are documents relating to an exempt agency exempt?

A document relating to an exempt agency may or may not be exempt under the FOI Act. An agency’s decision-maker may consider whether the document includes information that is exempt under any of the clauses in Schedule 1 to the FOI Act.

Is personal information about an officer of an exempt agency exempt?

Personal information that relates to an officer of an exempt agency may or may not be exempt under the FOI Act.

An officer of an exempt agency is an ‘officer of an agency’ as defined in the [Glossary](#) to the FOI Act. Personal information that relates to an officer of an exempt agency does not necessarily have a different status under the FOI Act to personal information that relates to an officer of a non-exempt agency.

Under clause 3(3) of Schedule 1 to the FOI Act, information that is merely ‘prescribed details’ relating to an officer of an agency is not exempt personal information under clause 3(1) of Schedule 1. However, in *I v Department of Agriculture and Food* [\[No 2\] \[2016\] WASC 272](#) the Supreme Court decided the

limitation on the exemption in clause 3(3) applies only to personal information that consists of the prescribed details of a person who is or has been an officer of the agency to which an access application is made and such information is not exempt under clause 3(1). On this basis, clause 3(3) does not apply to prescribed details relating to an officer of an exempt agency. Nonetheless, an agency's decision-maker should still consider whether disclosure of information of that kind relating to an officer of an exempt agency would, on balance, be in the public interest.

What if the exempt agency considers the agency is prohibited from disclosing the document?

An exempt agency may advise an agency's decision-maker they are prohibited from disclosing the document. The decision-maker may consider this advice but must make a decision about access in accordance with the FOI Act.

Clause 12(b) of Schedule 1 to the FOI Act provides information is exempt if its disclosure would contravene any order or direction of a person or body having power to receive evidence on oath. Certain exempt agencies have the power to make such direction, including the Corruption and Crime Commission.

An exempt agency may advise your agency that specific legislation prohibits disclosure of the information. [Section 8](#) of the FOI Act provides the access provisions of the FOI Act apply despite any prohibitions or restrictions imposed by other enactments¹ (whether enacted before or after the commencement of the FOI Act) on the communication or divulging of information, and a person does not commit an offence against any such enactment merely by complying with the FOI Act UNLESS the enactment is expressly stated to have effect despite the FOI Act.

Even if another enactment does not state it applies despite the FOI Act, the existence of a prohibition in an exempt agency's legislation or policies may be a relevant consideration for an agency's decision-maker when deciding whether the requested document contains information that is exempt under one of the clauses in Schedule 1 to the FOI Act.

¹ An enactment is defined in the Interpretation Act 1984 as 'a written law or any portion of a written law'



Office of the
**Information
Commissioner**
Western Australia

Address: Albert Facey House, 469 Wellington St, Perth WA 6000, Australia

Website: www.oic.wa.gov.au • **Telephone:** +61 8 6551 7888

Freecall (WA country): 1800 621 244 • **Email:** info@oic.wa.gov.au

The independent regulator fostering trust and accountability
in WA through privacy and freedom of information.