

**Oh My Goodness,
is that FOlable?**

Professor David Gilchrist

President

WA Institute of Public Administration

PREMIER Corporate Member



PSC | Public Sector
Commission



Murdoch
UNIVERSITY



Government of **Western Australia**
Department of **State Development**



AUSTRALIA

POST



Institute of Public
Administration Australia
WA

Advancing Excellence in the Public Sector

Freedom of Information: An unsung Cornerstone of our Democracy

Sven Bluemmel

Information Commissioner
Office of the Information Commissioner

Freedom of Information

The unsung safeguard of Parliamentary Democracy

Sven Bluemmel
Information Commissioner



Office of the Information Commissioner

“Freedom of Information ... I quake at the imbecility of it.”



Office of the Information Commissioner

Lofty goals

To enable the public to participate more effectively in governing the State.

To make the persons and bodies that are responsible for State and local government more accountable to the public.



A perfectly cromulent word

foiable /ɛfɔʌɪəb(ə)l/ adjective:

1. The ability of a document to cause its author to break out in a cold sweat several months or years after the document's creation.
2. Seeming more interesting and mythical than an examination of actual document content would suggest.

 *the Minister demanded to know why she was not informed that her unkind but entirely accurate comments about a constituent would be foiable.*



Principles

Assist the public to obtain access to documents

Allow access to be obtained promptly and at the lowest reasonable cost



Office of the Information Commissioner

Myths

“Commercial in Confidence”

Third party right of veto

45 days to process applications

Process mode



A final thought:

When you are dealing with a freedom of information matter,
remember that you are dispensing justice



Office of the Information Commissioner

Thank You



Office of the Information Commissioner

WESTERN AUSTRALIA



Institute of Public
Administration Australia
WA

Advancing Excellence in the Public Sector

***Text messages, post-it-notes,
CCTV and burnt out cars!
Accessible or not?***

Grace Grandia

Senior Advisory Officer
Office of the Information Commissioner



Office of the Information Commissioner

“Is it FOIable”

Grace Grandia

10 May 2011

What do these have in common?

- **Emails**
- **CCTV**
- **SMS**
- **Videos**
- **Post-it Notes**
- **DNA**
- **Photographs**
- **Diaries**

Freedom of Information Act 1992

They are all documents or records.

All FOIable.

Freedom of Information Act 1992

- *FOI Glossary*

“document” means –

(a) any record;

(b) any part of a record;

(c) any copy, reproduction or duplicate of a record; or

(d) any part of a copy, reproduction or duplicate of a record;

Freedom of Information Act 1992

FOI Glossary

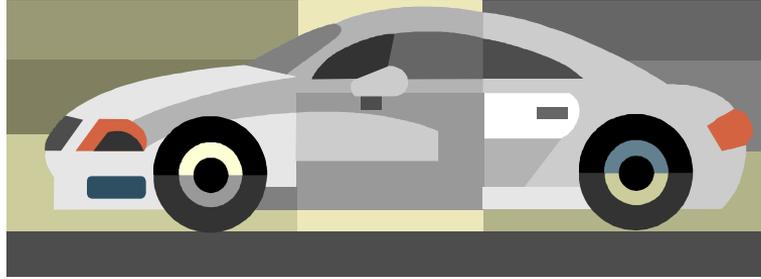
“record” means any record of information however recorded and includes the following –

- (a) any paper or other material, including affixed on which there is writing;**
- (b) any map, plan, diagram or graph;**
- (c) any drawing, pictorial or graphic work, or photograph;**
- (d) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons to interpret them;**
- (e) any article or material from which sounds, images or writing can be reproduced whether or not with the aid of some other article or device;**
- (f) any article on which information has been stored or recorded, either mechanically, magnetically or electronically;**

Document of an agency

- **In the possession or under the control of the agency.**
- **Agency entitled to access.**
- **Under the control of an officer of an agency.**

Burnt out motor vehicle



Compliance plate

Emails

- **Working from home.**
- **Stored on C drive – not saved on agency file.**
- **Deleted – can be retrieved?**

CCTV

- **Footage - can be accessible.**
- **Third parties images need to be pixelated.**



Tape Recording

- **Ways which access can be given –**
 - **Arranging for the applicant to listen to the tape.**
 - **A written transcript.**

Summary

- **Wherever and however information is recorded it can be applied for and may be potentially accessible.**



Institute of Public
Administration Australia
WA

Advancing Excellence in the Public Sector

Creating Complete and Accurate Records – Why Bother?

Cathrin Cassarchis

State Archivist and Executive Director
State Records

State Records Office of Western Australia

Creating Complete and Accurate Records – Why Bother?

Cathrin Cassarchis

State Archivist and Executive Director State Records



Government of **Western Australia**
Department of **Culture and the Arts**
State Records Office of Western Australia

State Records Office

- The State Records Office is the regulatory body charged with the responsibility of assisting government with the creation and management of government information.
- It is also the authority with responsibility for managing, preserving and providing access to the State's archives.

What is a Record?

Records can exist in a variety of formats and include:

- Emails, databases, web records, geospatial data, word documents, faxes, electronic registers, maps, plans, drawings, photographs and
- Anything on which information has been stored or recorded either electronically, magnetically or electronically.

Freedom of Information Act 1992 vs State Records Act 2000

The Acts are complementary...

- Under the *Freedom of Information Act* government records, with some exemptions, must be made accessible to the public.
- Under the *State Records Act* government records **must** be created and managed and, in time, made accessible to the public.

Why Create Records?

If records are to be accessible under FOI – why bother creating them in the first place?

- Legislation dictates that you ***must*** create complete and accurate records – *regardless of format*.
 - Not just the *State Records Act* but also a variety of enabling legislation relevant to specific business activities within government.
- Good business practice is essential to governance.

Why Create Records?

Business Value:

As Responsible Public Employees it is good business practice to –

- Document and justify what we do;
- Maximize public expenditure;
- Reduce duplication of activity; and
- Provide effective and timely public services.

Why Create Records?

Evidential Value:

As Responsible Public Employees it is essential to –

- Provide an accountable audit trail of activity;
- Comply with government policy;
- Comply with legislative requirements; and
- Ensure the public interest is served through the effective practices of government.

Why Create Records?

Historical Value:

As Responsible Public Employees it is essential to –

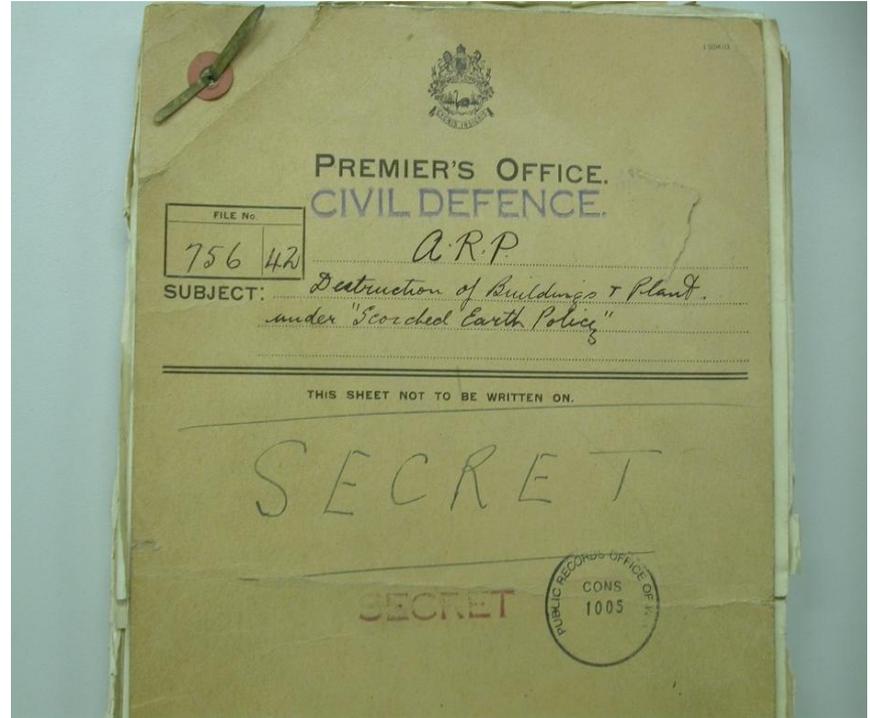
- Create documentary evidence of the government functions and activities of our time;
- Ensure that information is ***complete and accurate***; and
- Ensure that information is ***managed and kept*** for future generations; and

Why Create Records?

Why does it matter:

- Government records tell the stories of **how** we operate and **why**;
- **What services** are considered important to government and society; and
- **How those services** were delivered by the government of the day.

The right of access to all State archives regardless of location or format is a public right **unless** valid restrictions apply.



Nervousness or reluctance to create or declare the existence of records is counter productive to the FOI process and in contravention of legislative requirements.

L 1980/48



PREMIER'S OFFICE.

FILE NO.	
317	43

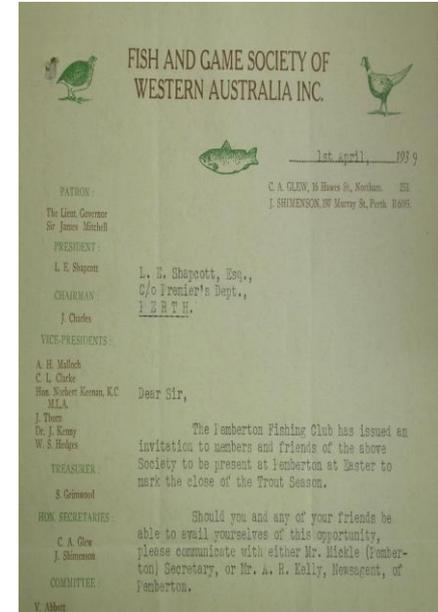
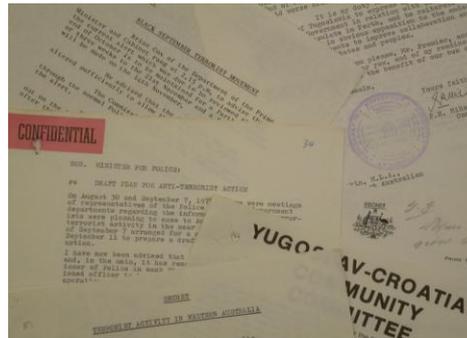
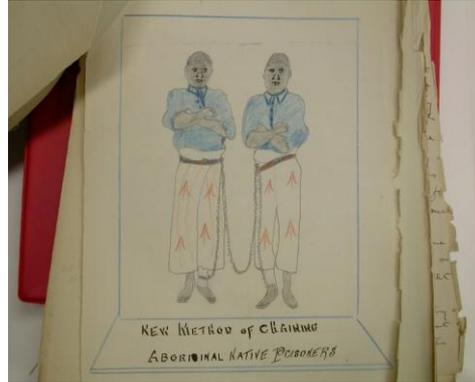
SUBJECT *Pamphlet. "Achievements of the Labor Govt" 1939-43"*

THIS SHEET NOT TO BE WRITTEN ON.

RECORDS OFFICE

Why are records of interest?

Government activity spans an enormous variety of functions – holding a vast amount of public information.



Why are records of interest?

- Records and archives are our essential memory;
- They are evidence of the decisions and issues that affect us today;
- They have many and varied values;
- Their value may change with time and use; and
- They tell the story of how we live, work, play and die.

Responsible governments:

- Have a philosophy of openness – hence the *Freedom of Information Act*;
- Effectively document their activities;
- Embrace the opportunity to contribute to the essential memory of this State; and
- Provide the means for future generations of government and citizens to understand their part in the history of Western Australia.

More Information:

For more information regarding support services (training; advice; consultancy) please contact the State Records Office:

phone: 9427 3360

Website: www.sro.wa.gov.au



Institute of Public
Administration Australia
WA

Advancing Excellence in the Public Sector

***Information release outside the
confines of the FOI Act 1992
The Western Australian Police
Experience***

John Purcell

Assistant Director, Office of Information
Management Judicial Services Portfolio
WA Police

IPAA PRESENTATION

May 2010

**Information release outside the confines off the
Freedom of Information Act 1992**

**The Western Australia Police
Experience**



2002 Kennedy Royal Commission

- **disorganised and ad hoc approach to information sharing and exchange**
- **Un-mitigated risks associated with inappropriate access and use of this information**

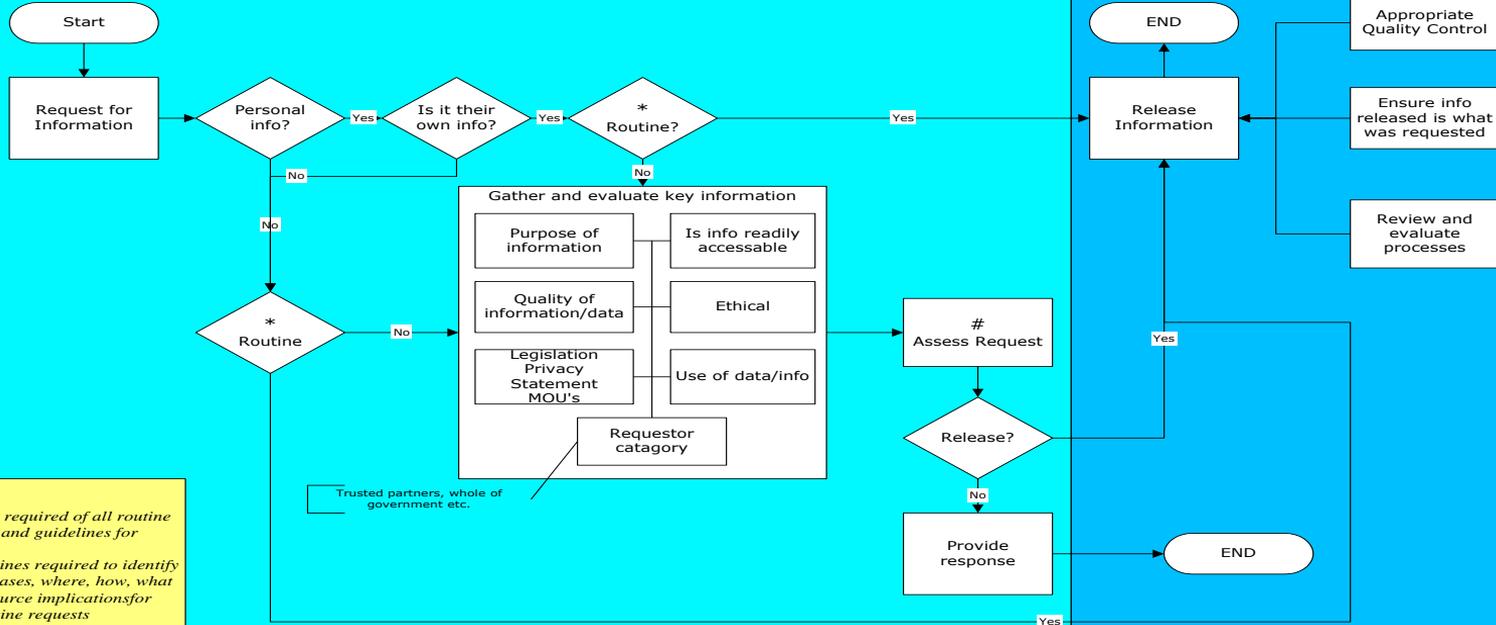
Information Release & Sharing Project

- **Centralised release of information**
- **Information Release Policy (AD85)**
 - **Privacy Statement (enabler)**

Information Release Unit

- **Integration of FOI & Information Release**
 - **Determine what could be released**
 - **Process for release**

**Office of Information Management
High Level Information Release Framework Principles**



*Note:
* Matrix required of all routine requests and guidelines for each.
Guidelines required to identify who releases, where, how, what and resource implications for non-routine requests*

Trusted partners, whole of government etc.

Request Evaluation Framework

Release Framework

Document to be released outside of the Act

- **Traffic Crash Reports**
 - **Incident Reports**
 - **Witness Statements**
- **Criminal History for Court**
 - **Crime Statistics**
- **National Police Certificates (national criminal history)**

Cost Recovery thru Police Fee Regulations

FOI Structure/Workload

	No. Applications	No. Staff
FOI Unit established 1993	181	3
Pre Information Release & Sharing Review 2003	1192	7
Current (2010)	2430	10

PI Structure/Workload

	No. Applications - 2010	
Crime Permissible Information Requests	3319	
Traffic Crash Permissible Information Requests	4182	
Traffic Conviction & Infringement Certificates	3304	
Total	10805	

Future Challenges

- **Business has contributed to a three fold increase in FOI applications at WA Police – mainly in order to mitigate commercial loss or negligence actions**
- **Consultation with public & marketing of information services available outside of the FOI Act at WA Police**



Institute of Public
Administration Australia
WA

Advancing Excellence in the Public Sector

FOI – Putting the “Public” in public servant

Mary Adam

Senior Legal Adviser
Legal & Legislative Services
Department of Health

FOI

Putting the **PUBLIC** in public servant

Mary Adam

Senior Legal Adviser Department of Health

Currently A/Manager Legislation Department of Local Government

FOI Act -Section 3

Objects and intent

- (1) The objects of this Act are to —
 - (a) enable the public to participate more effectively in governing the State; and
 - (b) make the persons and bodies that are responsible for State and local government more accountable to the public.
- (2) The objects of this Act are to be achieved by —
 - (a) creating a general right of access to State and local government documents;
 - (b) providing means to ensure that personal information held by State and local governments is accurate, complete, up to date and not misleading; and
 - (c) requiring that certain documents concerning State and local government operations be made available to the public.
- (3) Nothing in this Act is intended to prevent or discourage the publication of information, or the giving of access to documents (including documents containing exempt matter), or the amendment of personal information, otherwise than under this Act if that can properly be done or is permitted or required by law to be done.

Refusal of access

23. Refusal of access

- (1) Subject to section 24 the agency may refuse access to a document if —
 - (a) the document is an **exempt document**;
 - (b) the document is not a document of the agency; or
 - (c) giving access to the document would contravene a limitation referred to in section 7.

Schedule 1 exemptions

- **Cabinet and Executive Council**
- **Intergovernmental relations**
- **Personal information**
- **Commercial or business information**
- **Information provided to the Treasurer under section 22 of the Bank of Western Australia Act 1995**
- **Law enforcement, public safety and property security**
- **Deliberative processes**
- **Legal professional privilege**
- **Confidential communications**
- **The State's economy**
- **The State's financial or property affairs**
- **Effective operation of agencies**
- **Contempt of parliament or court**
- **Information as to adoption or artificial conception**
- **Information protected by certain statutory provisions**
- **Information as to precious metal transactions**

Schedule 2- exempt agencies

Governor and the Governor's establishment.

Legislative Council and Assembly or a member or committee or a joint committee or standing committee

A department of the staff of Parliament.

Auditor General and the Office of the Auditor General.

Corruption and Crime Commission.

Director of Public Prosecutions.

Information Commissioner.

Inspector of Custodial Services.

Parliamentary Commissioners for Administrative Investigations

Parliamentary Inspector of the Corruption and Crime Commission.

Prisoners Review Board.

Supervised Release Review Board.

State Government Insurance Corporation.

Any Royal Commission or member of a Royal Commission.

A special commissioner under the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002* ⁴.

Bureau of Criminal Intelligence, Protective Services Unit, Witness Security Unit and Internal Affairs Unit of the Police Force of Western Australia.

Internal Investigations Unit of Corrective Services.

A person who holds an office established under a written law for the purposes of a body referred to in this Schedule.

Exemptions with no exclusions

- Information provided to the Treasurer under section 22 of the *Bank of Western Australia Act 1995*
- Legal professional privilege
- Contempt of parliament or court
- Information as to adoption or artificial conception
- Information protected by certain statutory provisions
- Information as to precious metal transactions

Exemptions with exclusions

- Cabinet and Executive Council
- Intergovernmental relations
- Personal information
- Commercial or business information
- Law enforcement, public safety and property security
- Deliberative processes
- Confidential communications
- The State's economy
- The State's financial or property affairs
- Effective operation of agencies

Public interest test

8 of the 9 exemptions -

- Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be **in the public interest**.

Deliberative processes

- its disclosure would, on balance, be **contrary to the public interest**

Inter-governmental relations

- (1) Matter is exempt matter if its disclosure —
 - (a) could reasonably be expected to damage relations between the Government and any other government; or
 - (b) would reveal information of a confidential nature communicated in confidence to the Government (whether directly or indirectly) by any other government.
- (2) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.

Deliberative processes

- (1) Matter is exempt matter if **its disclosure** —
 - (a) would reveal —
 - (i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or
 - (ii) any consultation or deliberation that has taken place, in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency; and
 - (b) **would, on balance, be contrary to the public interest.**

Public interest test

- A **high bar** which potentially exempt matter must jump if it is to be with held.

FOI

Putting the **PUBLIC** in **public** servant



Institute of Public
Administration Australia
WA

Advancing Excellence in the Public Sector

Panellists

- **Sven Bluemmel**, Office of the Information Commissioner
- **Grace Grandia**, Office of the Information Commissioner
- **Cathrin Cassarchis**, State Records Office of Western Australia
- **John Purcell**, WA Police
- **Mary Adam**, Department of Health



Institute of Public
Administration Australia
WA

Advancing Excellence in the Public Sector

INDIVIDUAL Membership

Individual's who become Personal Members of the Institute receive:

- ✓Up to 35% discount on events & seminars
- ✓Up to 25% discount on training
- ✓Invitations to exclusive member-only events
- ✓FREE information CD to help you excel in your career
- ✓FREE subscription to quarterly publications



helping business grow

INDIVIDUAL Membership

Show your membership card and receive instant benefits at these specially selected partners:



Boffins
TECHNICAL &
SPECIALIST BOOKS

LUNA PALACE
CINEMAS



TRENCH
HEALTH AND FITNESS

For more information on
events or training visit:
www.wa.ipaa.org.au