

# FREEDOM OF INFORMATION

## ADVICE TO STAFF

### **What is Freedom of Information?**

The *Freedom of Information Act (1992)* (the FOI Act) applies to Edith Cowan University. The Act enables individuals to make applications to:

- apply for access to documents held by the University; and/or
- amend personal information about themselves held by the University.

Many different types of “document” are covered by the FOI Act and include (but is not limited to) such items as:

- paper records (for example: correspondence, reports, file notes, handbooks etc.);
- electronic records (for example, emails, web pages, information contained in databases);
- audio or video tapes;
- material on computer disks or other electronic storage devices;
- films, photographs, microfiche; and
- maps, plans, drawings.

Access to documents is most typically provided by providing the applicant with a copy of the document.

Access to documents is not however automatic. The Decision Maker (the FOI Coordinator or a person designated by the FOI Coordinator) considers each document carefully before release to ascertain whether the document contains any material that is exempt under the FOI Act.

Of particular note is the exemption that covers personal information – i.e. information that is about people other than the applicant. The privacy of third parties is an important consideration when deciding on the release of documents to an applicant.

Applicants may request information that is not about themselves. In order to make an application for non-personal information, the applicant is required to pay a fee (\$30) and there may be charges associated with the application.

### **Who can put in an FOI request?**

Any person or organisation can put in an FOI request. To make a valid request the request needs to:

- be in writing
- give enough information to enable the requested documents to be identified;
- provide an address in Australia to which a response may be sent;
- be lodged at the University with any fee which may be applicable.

The applicant does not need to say why they want the information and any reasons that might be suspected for the request cannot be taken into account during the decision-making process. You must never approach an applicant about a request, or discuss the request with an applicant.

### **How does the FOI Act affect me?**

Any document created by staff in the course of their employment at ECU is subject to the FOI Act. This includes emails and other written communication between staff members.

The document does not need to be included on an “official” University Records File (although staff are required to manage all records in accordance with the Records Management Policy).

You may receive a request under FOI for documents that you may have in your possession. You are required to diligently search for the documents and to provide them to the FOI Decision Maker as soon as possible. There are strict timelines for responding under FOI and you are asked to give priority to the request for documents.

If you are aware of other staff who may hold documents relevant to the request, you should advise the Decision Maker immediately. You do not need to ask your colleagues for documents unless you have been specifically requested to do so by the Decision Maker.

### **What about *my* personal information?**

Schedule 1, clause 3 of the FOI Act deals with the exemption for personal information. However, staff need to be aware that there are some limits on this exemption:

*(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.*

This means that

- (a) your name;
- (b) any qualifications held by the you relevant to your position in the University;
- (c) the position held by you in the University;
- (d) your functions and duties, as described in your job description document for the position held by the you; or
- (e) anything done by you in the course of performing your 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 and **cannot** be exempted in an application.

Where any of the above is included in a document, it will therefore most likely be disclosed to an applicant.

### **What input could I have into the decision-making process?**

The Decision Maker has the responsibility for making a determination under the FOI Act and that person is not required to discuss the decision with any member of staff. Further, applications are treated as confidential and unless necessary the name of the applicant will not be disclosed.

The only time you may become aware that an FOI application has been lodged therefore is when you are asked to provide documents in your possession.

You will be consulted if any of your personal details are included in documents under consideration. Even though the prescribed details are not exempt, you will be asked if you have any reasons that the Decision Maker needs to take into account before making a decision on releasing your information. There have only been rare occasions when the University has successfully argued that staff members' names should not be released, but nonetheless you will be asked before your details are released.

### **What do I need to provide?**

If contacted by the FOI Decision Maker you must provide **any** and **all** documents you have which fall within the scope of the application. You may have a view as to whether the document should be provided to the applicant, but you cannot decide not to provide a document.

Under the FOI Act, there are financial penalties (and potential imprisonment) which can apply if a person knowingly deceives or misleads the Decision Maker or if documents are concealed or destroyed.

Through the review processes, the Office of the Information Commissioner may request additional searches. It reflects badly on individuals and the University if additional documents become known at later stages of the FOI process.

If in doubt, please contact the Decision Maker to discuss any concerns you have regarding particular documents and he or she will be able to advise you.

As already stated, there are strict timelines specified within the Act, which requires the University to respond to the applicant within 45 days of receipt of the application. It is essential therefore that material is provided to the Decision Maker as quickly as possible to enable sufficient time for review of documents, the writing of the Notice of Decision and if necessary, for the preparation of edited materials for release.

### **What kinds of access does an applicant have?**

Once a determination on the document(s) has been made, the Decision Maker will provide the applicant with a Notice of Decision. The Notice will include:

- A decision on the document(s) to provide:
  - Access in full
  - Edited access
  - Access refused
  - Deferred access
  - (for Medical and psychiatric information) access provided via a suitably qualified person.
- Reasons for decision. In the case of anything other than full access, the Decision Maker will need to provide reasons for the decision, including any exemption claimed.
- Details of searches, consultation and any other relevant actions undertaken during the course of the decision-making process.
- Information on the rights of review for the applicant.

### **Who makes the final decision on applications?**

The Decision Maker (determined by the FOI Coordinator) makes the decision on behalf of the University.

The applicant has the right to seek an internal review of that decision. A member of staff who is not subordinate to the Decision Maker undertakes this review.

After an internal review, the applicant has the further right to apply to the Information Commission for an external review of the decision of the University. Ultimately, therefore the Information Commissioner will make decisions on access.

One of the key objects of the FOI Act is *"to make persons and bodies that are responsible for State and local government more accountable to the public"*. This is an aim, which the Information Commissioner takes very seriously. The FOI Act is weighted in favour of disclosure, with agencies required to justify decisions not to provide access to requested documents.

### **What do I do if I get a request for information under FOI?**

Immediately refer any requests for information under FOI MUST to the FOI Coordinator. There are strict time limits for responding to an application request.

Under no circumstances should you engage with an applicant on their FOI request.

### **What can I do to help the University and myself?**

The best advice to staff is to continue to do what we do best – provide helpful, professional and comprehensive guidance and advice to colleagues and students.

Practice the University values of integrity, respect, professional enquiry, and personal excellence when you create documents. A flippant remark or unprofessional comment in an email written in haste might cause you embarrassment if it has to be produced later on.

Read and apply the University's *Email Policy*.

Keep good records. Information which is incomplete, or documents which cannot be found, makes the University look disorganised and does not assist either the applicant or the University.

Talk to the Decision Maker or the FOI Coordinator about any concerns, which you have.

### **Any other questions?**

If you have questions at all about FOI please contact:

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