



OmbudsmanSA

FREEDOM OF INFORMATION

Information Sheet - Publishing Determinations

This information sheet will help you to understand considerations relevant to the Ombudsman's decision about whether or not to publish the reasons for a determination he has made under the *Freedom of Information Act 1991*.

The power to publish

Under section 39(14) of the *Freedom of Information Act 1991* the Ombudsman is empowered to publish the reasons for his determination 'in such manner as ... [he] thinks fit', if he 'considers it to be in the public interest or the interests of an agency to do so'.

Pursuant to this power, the Ombudsman has published numerous determinations and reasons on the Ombudsman SA and Austlii websites:

<http://www.ombudsman.sa.gov.au/publications/foi-determinations/>

<http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/sa/SAOmbFOI/>

Considerations

When deciding whether or not to publish reasons for a determination in the public interest or the interests of an agency, the Ombudsman considers whether doing so would serve:

- an educative purpose by communicating to agencies and the public the Ombudsman's interpretation of the law and its application to the particular factual circumstances
- to highlight areas of disagreement within the community or areas of law that may need reform
- to inform public debate on an issue that is in the public interest.

To this end, the Ombudsman considers, among other things, whether the determination itself:

- is unique or interesting
- is based on novel facts or circumstances
- addresses possible systemic issues in an agency's handling of FOI applications
- includes comments relating to an agency's handling of an FOI application
- was strongly disputed by one party.

The Ombudsman may choose to redact information from the determination and reasons.

For example, the Ombudsman will usually redact information from the determination and reasons if disclosure of such information:

- could reasonably be expected to:
 - identify a person who is presently under the age of 18 years or suffering from mental illness, impairment or infirmity, or falls within a class of vulnerable persons; or
 - reveal the personal affairs of any person (living or dead) that should ordinarily be kept confidential; or



- put any person's safety at risk;
- and would, on balance, be contrary to the public interest.

Our process

Before the Ombudsman makes his decision about whether or not to publish reasons for a determination, parties to the review are invited to provide their views. All responses received inform the Ombudsman's decision. The Ombudsman is not bound by the views of the parties, however.

The decision about whether or not to publish a determination and reasons, and in what form, rests with the Ombudsman. It is not a reviewable decision.

Issued: 4 December 2018