OAIC Discussion Paper on Disclosure Logs

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Q1. Is it appropriate to refer to each agency's and minister's publication of information under s 11C as a 'disclosure log'?

I consider it entirely appropriate to refer to the publication under s.11C as a "Disclosure Log". This term has been in use for some years overseas (e.g. in the UK) and it is in current use in several other Australian jurisdictions. It therefore has a good recognition factor and to use a different term for the same concept would be unnecessarily confusing to the public.

Q2. Should agencies and ministers inform FOI applicants and third parties of the requirements in s 11C and invite comments about whether an exception applies?
For those situations (not including first party requests for personal or business information), agencies should inform FOI applicants and third parties of the requirements in s.11C, and ask whether they would have an objection. Some State agencies include this on the FOI application form, and give applicants a tick box option at that point. In consultations with third parties, however, the giving of such a warning should be handled delicately, as awareness of the Disclosure Log could potentially act as a strong deterrent against agreeing to disclosure.

Q3. Should the Information Commissioner make a determination that s 11C does not apply to personal case files? The Information Commissioner welcomes comment on how such a determination should be worded.

Q4. What other classes of information should be exempted from the operation of s 11C by a determination made by the Information Commissioner?

Disclosure Log Exceptions

Part of the purpose of the Disclosure Log is to make available to the public at large information which has been released under FOI which may be of interest more broadly. It would therefore almost never be appropriate to include information from personal case files or where factors specific to the particular applicant were relevant in determining whether the information should be released.

The most common situation is that of a first party individual (or a person authorised to act on their behalf) seeking access to their own personal information. Though less common, the other situation would be a business entity seeking access to its own information. In both such cases, it should be clear in the Guidelines that these are not appropriate for inclusion in the Disclosure Log.

A related situation would be where a third party has sought access to someone else's personal information, and such access has been granted due to factors such a relationship between the parties (e.g. spouse or other family member or staff members involved in a workplace dispute or grievance) where their identities and the content of the information/allegations is known to all involved parties. The New South Wales *Government Information (Public Access) Act* in s.26(3)(b) sets out an exclusion along these lines, for information "(b) in respect of which any factors particular to the

applicant were otherwise a consideration in the agency's determination of the public interest in connection with the disclosure of the information to the applicant."

There are at least two other situations not specifically addressed by the exceptions in s.11C. One would be where a person / entity had provided information in confidence to the government agency and was given access to this in response to an FOI request. The disclosure of this information would normally be regarded as a breach of confidence vis-à-vis any other applicant. Similarly, where an applicant is seeking access to information relating to their own research, which may be released to them without harm, but where there could be damage if released more broadly.

Q7. Should all agencies and ministers adopt the same template for their disclosure log?

Q8. Should a disclosure log contain the headings and information specified in the draft template annexed to this paper?

I think there is value for the public in having a fairly consistent approach taken by agencies to the presentation of their Disclosure Logs. However, there may be agency-specific factors to do with the nature of their requests or the nature of their disclosures, which may require different headings or modification, and I think there should be scope in the Guidelines to allow this.

The format in Annexure A is quite good. However, given the likely size or volume of content under the third and fourth columns in particular, I suspect that the width of this table on a standard web browser window may be too great to permit it being seen at a glance without needing to scroll horizontally. The column headed, "Date when information may be deleted from a website," could safely be omitted, and the column "Other information" may not often be utilised. If "Other information" is omitted as a column, then the information such as whether the disclosed information has been revised could be included under the fourth column.

Q9. Should the disclosure log contain a summary of an FOI applicant's request, whether the documents requested were provided in full or in part, and whether all information provided to the FOI applicant is made available under the disclosure log?

Q10. Should this information be provided in the disclosure log register or in some other manner (also see question 8 above)?

Q11. Should it be open to an agency or minister to supplement a disclosure log entry with comment or explanation?

The Disclosure Log should contain at least a general topic / keyword based description of the FOI applicant's request, or it becomes impossible to scan or search for topic related enquiries. For longer or more complex requests, the request (suitably de-identified) should be bundled with the disclosed documents. Other explanatory or contextual information about the disclosed documents could be similarly bundled with them, rather than entered into the Disclosure Log itself.

It may be possible for a de-identified copy of the decision letter to be bundled with the documents, as this would assist a reader in seeing precisely how much information was and was not disclosed, and the reasons which formed the basis of the decision.

An agency or Minister should definitely have the option to supplement a Disclosure Log entry with comment, explanation, cross-references, or any other information which may assist the public in accessing or understanding the information in the Disclosure Log.

Q12. What steps can be taken by agencies to make information in a disclosure log easily discoverable, understandable, machine-readable and accessible for members of the public?

The link to the Disclosure Log should either be on the first page of an agency's website or linked from the FOI link on that page. The use of the OAIC's logo is a good idea to make the Log more discoverable for the public.

Accessibility is a challenging issue for all government departments, and the following remarks are far from comprehensive. (I will use the term "accessibility supported" and "assistive technologies" as defined in the WCAG 2.0.) As the preponderance of the material in the Disclosure Logs is textual and numerical, my comments focus on making such material accessible to people whose visual capabilities require them to use "screen readers" (which pronounce the contents of electronic text files).

As the discussion paper states, a significant challenge is that the majority of documents (still, to this day) to which access may be given are "legacy" documents that exist only on paper. Examples include:

- letters sent to agencies by the public,
- handwritten notes taken during interviews,
- logbooks, diaries, index cards, and registers,
- file notes (including of phone calls)
- all agency documents created in the era of typewriters (or earlier).

An agency **will never have had** an electronic copy of any of these documents, and in order to make their content friendly to assistive technologies, they would have to be typed in or scanned using Optical Character Recognition. Then the inevitable errors would have to be identified and corrected (because despite the promises made by providers of OCR technology, an error rate of 5-10% persists).

Sadly, given the condition of most public records (frequently created and stored only as paper), I agree that it is not currently feasible to mandate the provision of screen-reader-friendly files for the entire contents of each agency's Disclosure Log. One option would be to wait to produce the machine-readable version until such a version has been requested by at least one member of the public. In the case of some documents, if they are being accessed by persons who do not have sophisticated accessibility tools installed, it may be preferable to have a staff member read the content of the document into an audio file. In the case of documents containing diagrams (e.g. plans, surveys, maps), present accessibility technology requires special technology to produce a version of the diagram with raised lines, and this obviously cannot be placed on the Web.

Over time, as most documents created at present are easily shared in a machine-readable format, and as the accessibility tools for graphics and diagrams grow more advanced, this problem may be expected to decrease.

It has been found in other contexts (such as libraries) that people are materially assisted by providing an accessible summary of each non-accessible document. (An appropriate analogy: accessible Web pages have an ALT tag, with a textual description, for each online image.) If non-accessible documents in a Disclosure Log had a short description or abstract adjacent to their names in the list, this would allow people to determine the extent to which they wished to pursue the full versions.

In the case of assistive technologies being used to access a public Disclosure Log, I agree with the approach proposed in Part 1(b) and Annexure A, which suggests posting a message asking members of the public to contact the agency for the accessible versions.

Looking at the range of record formats which could be captured by an FOI request, the following additional issues arise:

Format in which databases (including spreadsheets) are provided

Databases, including spreadsheets, may in some cases need to be provided in a controlled, "frozen", non-searchable format. If full access is being given to the document, then the only issue that arises for native formats is whether there would be any concerns regarding publication in the particular form (example: a PDF or screen shot of a database does not permit manipulation/cross-tabulation of fields within the database). If the database were made available in its native format, permitting sorting to be done and queries to be run against it, that may make it possible to deduce and expose personal information (even in a statistical database) in a manner that would risk a breach of privacy.

With electronic documents in other formats, such as Word, there may be situations where providing the native format could create authentication or security problems. For example, if the recipient manipulated the contents of a document that is on government letterhead, the recipient could then use the altered document in place of the real document, potentially for fraudulent purposes.

Records requiring redaction

Where an agency makes a decision to exempt information, it is on the grounds that harm would flow from disclosure. This makes it of vital importance that information is redacted securely and in a manner that cannot be reconstructed by the recipient. To achieve this, most agencies use a combination of scanning / inputting documents into Adobe Acrobat, and deleting the exempt information using tools (such as Appligent's Redax software) which securely remove the exempt information. The resulting redacted document is in PDF form, and, as I understand it, is unlikely to be machine-readable, especially if it was scanned as an image file.

Within Acrobat Pro v.9, there is a command "File – Export – Text – Text (Accessible)" that allows the content of some PDF files to be exported to machine-readable format. There may also be other tools that make PDFs accessible, whether these are settings that can be determined at the time of production, or tools that can be

provided afterwards. (If there were freely available versions of the latter, perhaps the agencies could provide links to them.)

Q13. Is 12 months a reasonable period for agencies and ministers to make available, by website download or otherwise, information that is listed in a disclosure log register?

Q14. Should the disclosure log register indicate when information is likely to be removed from an agency's or minister's website, or the date on which information was in fact removed?

I consider twelve months is a very short period for retention of the content of a Disclosure Log on an agency's web site. As an alternative, I would suggest archiving on the web site the Disclosure Log and its linked contents, upon separate pages. The current year's Disclosure Log, or the immediate past twelve months' Disclosure Log, should appear in response to a menu choice. The Disclosure Log entries of preceding years could be archived and links to each of these years should be on the first Disclosure Log page. The entire contents of the Disclosure Log would therefore remain searchable using either the search box on the agency's web site or commercial search engines such as Google.

The nature of the contents of the Disclosure Log should mean that it is of use to the public for longer periods than twelve months. If server space becomes a problem due to storing the large size PDF files containing the released information, then these could be removed from the site after twelve months, and the Disclosure Log entry for them should offer that a copy would be sent to the searcher in response to an e-mail or enquiry on a web-based form.

Q15. Should agencies and ministers adopt a practice of updating their disclosure log on a particular day each week or fortnight?

There are a number of options in other jurisdictions concerning the time frames for inclusion in the Disclosure Log. The Commonwealth specifies only a maximum period and not a minimum. Queensland's *Right to Information Act* specifies (s.78(4)) that the information must not be included within 24 hours of the applicant gaining access, but must be published within 5 working days (in the Premier's Guidelines). In New South Wales, the GIP(A) Act does not specify a minimum or maximum; however, if the agency publishes in the Disclosure Log either before or within 3 working days of access being given to the applicant, the applicant is entitled to a full waiver of the processing charge (s.66(2).

One issue which arises is that the agency needs to ascertain, with some precision, when the applicant has received the released documents. This could be done in a number of ways, including read-receipt of an email, phone call confirmation, or Acknowledge Receipt via registered mail (although the last of these would take far too long to be received in the agency to be useful as official notice of receipt in order to meet the timeframe).

The most sensitive area in terms of the timing of publication relates to those applicants such as the media, where there are commercial implications for their timely and exclusive use of the information. The NSW approach reflects this in requiring the refund of charges if the applicant does not receive three working days' exclusive use.

The Queensland period of 24 hours (note this is not specified to be occurring on a working day) has caused problems; for example, an agency may release information at 4:30 pm on Friday, and is legally entitled to have the information on its web site on Monday morning at 8:30 am.

Where an agency is charging an applicant for access to the information, I consider it would be a disincentive to such uses of the Act to deprive the applicant of any period of exclusive use of the information which they had paid for. Where no charges are being levied, this is less of an issue.

If agencies adopted and publicised a practice of updating their Disclosure Log on a particular day (within each week or fortnight), this would assist regular users in checking for new content. However, there are several additional ways to achieve this:

- The agency's site itself could provide a subscription option, "click here if you would like to be advised of updates".
- The agency could add an automated RSS feed so that members of the public who used RSS readers to follow blogs and other sites could be alerted when new content is posted.
- Members of the public could use a free, publicly available service such as http://www.changedetection.com/ to ask to be notified by these third parties when the agency's page is updated.

Q16. What other steps should be adopted to ensure a consistent and suitable approach across government to disclosure log publication?

It would be useful for agencies to have guidance concerning a consistent approach to reproduction charges for information from the Disclosure Log. Of course there need be no charges for electronic documents available for download, or for sending to an applicant via email (or CD for larger-sized files). However, there could be a burden on agencies if there is no scope for even reasonable hard-copy reproduction charges above a certain number of pages, or for more expensive formats such as photographs, maps, or audiovisual material.

Another area where agencies may need guidance is where access is granted to material where the copyright is owned by a third party outside of government. The material may not fit within an exemption; however, provision of a copy would breach the owner's copyright (s.20(3)(c) allows that access be given in another form). Options for facilitating such access electronically could be explored, including using PDFs which have been secured against saving or printing, which would permit on-screen viewing only of such copyrighted material. (The user may capture the content via a series of screen shots; however, the agency's choice of format would not facilitate the breach of copyright, and this may be regarded as sufficient protection.) If no solution to this problem can be developed, then the guidance to agencies should require them to explain that certain material was disclosed but cannot be included in the download available from the Disclosure Log due to copyright restrictions.