

Freedom of Information: Balancing the Public Interest

by Megan Carter
and Andrew Bouris

Second Edition
May 2006

The first edition of “Balancing the Public Interest” was commissioned by the Office of the Information Commissioner and written by Meredith Cook of The Constitution Unit in 2003. It has been the Unit’s top-selling title ever since. Megan Carter (an Honorary Senior Research Fellow of the Constitution Unit) is an FOI practitioner and trainer with over twenty five years’ experience in Australia, Ireland, and UK FOI matters. Her co-author, Australian barrister Andrew Bouris, has over twenty years experience in administrative law. They have completely overhauled and revised this book so that it provides support for FOI

decision-makers in all Westminster-style jurisdictions. In its 330 pages, 386 relevant cases are analysed in terms of their public interest arguments, with reference to 57 more. The main jurisdictions studied include the **United Kingdom, Scotland, Ireland, Australia** (federal and two states), **Canada** and **New Zealand**. There are 635 footnotes, of which nearly 500 have clickable links (in the PDF version included with the book) to the online locations of the decisions. Tables of cases listing public interest arguments, further references and a detailed index make this an invaluable resource for FOI practitioners.

Matters of public debate and accountability for functions

- The public interest in disclosure is particularly strong where the information in question would assist public understanding of an issue that is subject to current national debate (UK Ombudsman Decision A.11.02)
- The issue has generated public or parliamentary debate (UK Ombudsman Decision A.31.00)
- Views and representations which influence the legislative process should be open to public scrutiny (Mr. Pauline McAleer and Department of Justice, Equality and Law Reform Information Commissioner's Ireland Decision 2005, chapter 5 below)
- Public interest in transparency and understanding the setting of school budgets: FS 50074589 (UK Information Commissioner)
- Public interest in transparency of an investigation process at a publicly funded university: FS 5000353 (UK Information Commissioner)
- Directory of staff contact details of Defence organisation: FS 50073980 (UK Information Commissioner)
- Interest in public being made aware of the reasons for delay in the commencement of legislation: Decision 057/2005 (Scottish Information Commissioner)
- Accountability and transparency of a public Tribunal: Case 000274 (Irish Information Commissioner)
- Information concerning closure of an educational institution: Case 031109 (Irish Information Commissioner)
- Information concerning the identity of an FOI requester where suspicion of impropriety might otherwise attach: Case 030759 (Irish Information Commissioner)
- Details concerning settlement of a litigious employment dispute: Case 000528 (Irish Information Commissioner)
- Information concerning hospital practices: Case 03087 (Irish Information Commissioner)
- Information concerning housing policy: Re Graham Downie (Australia Commonwealth AAT)
- Strath Eldon Commission (New Zealand Information Commissioner)
- Assessments and advice on implications of a court decision for government policy: Re Eccleston (Queensland Information Commissioner)
- Disclosure concerning possible scientific fraud at a public university: Pope and Queensland Health (Queensland Information Commissioner)
- Documents concerning a corrections facility: McGee v University of NSW (NSW ADT)
- Documents of a concluded investigation into a solicitor in order to satisfy the public interest in accountability of the regulating body: Myles Thompson and Queensland Law Society (Queensland Information Commissioner)
- Documents relating to a Law Society's failure to take any action against a solicitor: Queensland Law Society Inc and Legal Ombudsman (Queensland Information Commissioner)
- Scrutiny of a department's activity in monitoring an important resource: Queensland Department of Primary Industries (Queensland Information Commissioner)
- Footscray City Council (Queensland Information Commissioner)
- Accountability in relation to the licensing and supervision of builders: Keanatt Projects Pty Ltd and Building Services Authority (Queensland Information Commissioner)
- Non-legal advice as to the content of new regulations: General Manager, WorkCover Authority of NSW v Law Society of NSW (NSW Court of Appeal, NSW ADT, Appeal Panel) (Queensland Information Commissioner)
- Information concerning a hospital investigation: Cases W38403, 39515, and 39558 (NZ Ombudsman)
- Accountability for the escape of a psychiatric patient: Case W45650 (NZ Ombudsman)

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Public interest in disclosure outweighed potential harm

- Information relating to the system of hygiene inspections carried out by Council
- Information showing that a department is responding properly to serious funding issues
- Public interest in transparency and understanding decisions where detrimental effects not demonstrated
- Public interest in a company knowing why it was being investigated in circumstances where identity of the informant would not be disclosed
- The proper investigation of complaints in relation to the setting of standards for pharmacology students at a publicly funded university

Public interest in disclosure did not outweigh harm caused by release

- Prejudice to the negotiating position of an agency
- Potential vandalism of speed cameras, prejudice to road safety, and increased non-compliance with traffic laws
- Very strong interest in upholding legal professional privilege to ensure agencies seek and receive full and frank advice to assist the lawful performance of their functions
- Prejudice to the safety of the Royal Mail
- Disclosure of Vehicle Identification Numbers could lead to vehicle cloning
- Prejudice to the position of the Post Office in an increasingly competitive environment by disclosure of inter-national relations concerning alleged offences by diplomats
- Prejudice to international relations concerning alleged offences by diplomats
- Inhibition of discussion in a matter of the utmost sensitivity to the BBC
- Where old matters which had already been litigated would be re-litigated for no useful purpose and with prejudice to individuals
- Protection of continuing availability of information from police informants

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