



Inter-governmental relations exemption

Information Act Guideline

Section 51 exempts information the disclosure of which would prejudice inter-governmental relations between 2 or more bodies politic.

Scope of the exemption

The Commonwealth and the States are clearly bodies politic for the purposes of the exemption. So too are the Australian Capital Territory and the Northern Territory which are both declared to be bodies politic by their constituent legislation.

For example, the exemption will arise if disclosure **would prejudice** inter-governmental relations between the Northern Territory and the Commonwealth or between the Northern Territory and Victoria.

It will also arise if disclosure would prejudice inter-governmental relations between the Northern Territory and another country.

Does one of the bodies have to be a Territory body?

In other jurisdictions, the exemption is usually expressed in terms of prejudice between the government of the jurisdiction and another government. However, the NT exemption would appear to allow the exemption to be grounded on prejudice to relations between two other jurisdictions, for example between the Commonwealth and NSW.

Does the exemption extend to relations with local authorities?

Having considered the inter-governmental relations exemption in the context of the *Information Act*, the Commissioner presently holds the view that the exemption does not extend to relations between Territory level organisations and NT local authorities.

The exemption does not expressly state that it protects such relations. Corresponding exemptions in other jurisdictions do not extend

so far, except in South Australia where councils are expressly included in the definition of bodies politic.

A submission that the corresponding provision under the *Freedom of Information Act* (Qld) extended to relations between the State and Queensland councils was rejected by Wilson J of the Supreme Court in *Brisbane City Council v Albietz* [2002] 2 Qd R 1; (2001) 6 QAR 10, [2001] QSC 160, upholding the decision of the Queensland Information Commissioner in *Re Santoro and Department of Main Roads* [2000] QICmr 3.

While there are differences between the wording of the Queensland and Northern Territory provisions, the decisions cited in that case give useful guidance on the interpretation of s.51.

The following factors point against an interpretation of the exemption that extends to relations between Territory level organisations and NT local authorities:

- FOI legislation has been recognised by the courts as beneficial or remedial legislation. If the legislation is ambiguous, it should be interpreted in a way that would further, rather than hinder, free access to information. (See *Victorian Public Service Board v Wright* (1986) 160 CLR 145, 153; *Searle Australia Pty Ltd v Public Interest Advocacy Centre* (1992) 36 FCR 111, 115; *Queensland Law Society Inc v Albietz* (1996) 2 Qd R 580, 585.)
- Local authorities are constituted under NT legislation for the conduct of specific functions within the responsibility of the Territory. The *Local Government Act* (NT) sets out a scheme that includes significant potential for Ministerial overview or supervision of local government (see, for example, s.15, s.30, s.180, s.181A, Part 12 and Part 13).

Inter-governmental relations exemption

- Local authorities are themselves expressly made subject to the FOI scheme (s.5). This supports the view that they should be treated as organisations within the NT scheme rather than as separate bodies politic.
- Local authorities are required to disclose information under the FOI scheme and could not rely on the inter-governmental relations exemption to refuse access to information in their own hands. For example, if a broad interpretation was accepted, a department could refuse access to a letter from a Council on the basis that its disclosure would prejudice relations with the Council, but the Council, when faced with an FOI access application, could not rely on the exemption.
- If the exemption were to apply to relations between Territory level organisations and NT local authorities, it would also arise when relations between one community council and another would be prejudiced. Such a broad interpretation would not further free access to information.

Public interest test

Even if information falls within this provision, it will only be exempt if, in the particular case, it is not in the public interest to disclose the information. See the guideline on *Public Interest Test in Exemptions* for more.

Need to consult third parties

If disclosure of information might prejudice inter-governmental relations, a public sector organisation must not decide to provide access without having sought the views of the relevant bodies politic (s.30).

There is no right of veto. The public sector organisation makes the decision. However, the third party must be notified of the decision,

and can complain to the Information Commissioner if a decision is made to grant access to information contrary to its views.

Previous decisions

When reading the decisions from other jurisdictions listed below, it is important to recognise that many involve consideration not only of the corresponding exemption to that discussed in this guideline but also an exemption for information communicated in confidence.

- General discussion of test – comments by state provided for purpose of Commonwealth revision of guidelines for export of koalas - exempt. *Arnold (on behalf of Australians for Animals) v Queensland* (1987) 73 ALR 607.
- Transcript of inter-governmental ministerial council meeting regarding bike helmets - not exempt under this provision. *Re Cyclists Rights Action Group and Department of Transport* (1994) 35 ALD 187. See also *Re Cyclists Rights Action Group and Department of Transport* [1995] WAICmr 16.
- Comments exchanged between ACCC and Victorian department on draft Victorian retail leases legislation - exempt. *Re Shopping Centre Council of Australia and ACCC* [2004] AATA 119.
- Letter from state Attorney-General to Commonwealth Attorney-General seeking extradition of a person - not exempt under this provision. *Re Birch and Attorney-General's Department* (1994) 33 ALD 675.
- Territory responses to draft environmental impact assessment on McArthur River Mine - exempt. *Re Environment Centre NT Inc and Department of the Environment Sport and Territories* (1994) 35 ALD 765.

1800 005 610 — infocomm.nt.gov.au — infocomm@nt.gov.au

This guideline is produced by the Information Commissioner to promote awareness and understanding about the *Information Act*. It is **not a substitute for the Act**. You should read the relevant provisions of the Act to see how it applies in any particular case. Any views expressed in this guideline about how the Act works are **preliminary** only. In every case, the Commissioner is open to argument by a member of the public or a public sector organisation that a different view should be taken.