

# FOI Circular # 7

## Confidentiality of an FOI Applicant's Name and Personal Details

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## **Confidentiality of a Freedom of Information Applicant's Name and Personal Details**

It is important that individuals who submit requests to public authorities for government records feel secure that, in the process of making an application under the Freedom of Information Law 2007, their identities can remain confidential within a public authority's internal FOI process.

Section 23 of the FOI Law includes an exemption for the unreasonable disclosure of personal information of any person, whether living or dead. This generally means that personal information held by a public authority is exempt under the FOI Law and will not be released to a third party in response to an FOI application, except in limited circumstances. This also means that *personal information should not be proactively released unless it is allowed or demanded by another law, or if it is otherwise necessary for the public authority to perform its functions completely and properly*. An information manager should take care not to divulge the name and other personal details of an individual who has made an FOI request to anyone in their public authority who is not specifically authorised to have access to this information by the Chief Officer.

## **What is an Applicant's Personal Information and Why Should I Protect It?**

Personal information is defined in section 2 of the Freedom of Information (General) Regulations 2008 to include an individual's name, home address and home telephone number. These details will be given by an applicant when he or she makes an FOI request and you will need to record these details in order to respond to the request. *The FOI Unit has advised that, as a general rule, the personal information of a requestor must be kept completely confidential.*

Although the Cayman Islands does not currently have data protection legislation, public authorities should take care in the storage and handling of such information and generally treat it as confidential, both in relation to requests from other applicants and release of this information to other civil servants who are not involved in processing the FOI request or otherwise authorised to have access. Most importantly, *Information Managers should never casually discuss FOI requests, either inside or outside of their office, and release an applicant's name in this manner.*

In addition to the restriction on releasing personal information that is contained within the FOI Law, many applicants will provide their name and contact details to public authorities on the implied basis that it will be held in confidence. This mutual understanding of confidentiality requires the Information Manager who receives requests to safeguard the information appropriately.

## **The Rights of an Applicant under FOI**

The protection of the rights of an applicant (as a third party) is specified in the FOI Regulations. An applicant would have a right of appeal under sections 11 and 12 of these Regulations if a public authority determined that the release of the requestors name was not an unreasonable disclosure of personal information and/or was in the public interest. Information Managers must therefore be cautious not to release the name of the requestor to anyone who is not recognised in the internal policies and procedures of the public authority as being involved in the FOI process and does not generally deal with FOI requests (i.e. Information Manager, Records Officer, Chief Officer or Minister).

## **The Policy of the Information Commissioner's Office (ICO)**

In section 9 of her Policies and Procedures ("Hearings before the Commissioner"), the Information Commissioner has indicated that the Notice of Hearing that will be posted on the ICO website shall have the identity of the appellant removed, unless the ICO receives consent to publish the appellant's identity. This is clearly in line with a public authority's initial duty to safeguard an applicant's personal information and shows the ICO's commitment to such confidentiality.

## **Applicant-Blind Decisions**

Finally, a public authority's decision to grant or refuse access to an FOI request should almost never be influenced by the identity of the person making the request. The identity of the requestor is not usually a material consideration. A person's identity may only be relevant in the processing of an application where it relates to a substantially similar request; it relates to the conduct of an applicant in relation to a vexatious request; the identity is critical to determine whether an exemption on the basis of endangering a person's health or safety is to be applied, and finally if it is an applicant making a request for their own personal information.