

Smith, Gemma

From: Smith, Gemma
Sent: Tuesday, 16 July 2024 2:01 PM
To: Hutton, Bridget; Ingham, Courtney
Cc: Kelly, Carmen; Bray, Ella; Hegarty, Corinne
Subject: RE: R2407-008 - enquiry response - FW: Redactions in white

And the Greens have also won their battle to stop Government departments censoring RTI-released documents with white blocks, which makes it hard to tell where information has been removed.

“For a short period of time, the Department [of Primary Industries, Parks, Water and Environment] was trialling different colours for redactions,” the Department said in response to the Ombudsman’s inquiries.

“It was quickly realised white was not a suitable colour and the Department has been using grey redactions since.”

The Ombudsman said no government entity should redact documents with white.

“White could appear as if information never existed there in the first place ... thereby avoiding proper scrutiny,” it said in a directive to departments.

es “It is vital that it is made clear and obvious to the applicant exactly where information
y has been redacted due to an exemption and the ground for that exemption.”

I’ll find the decision this article was referring to

From: Hutton, Bridget <Bridget.Hutton@dpac.tas.gov.au>
Sent: Tuesday, July 16, 2024 1:58 PM
To: Smith, Gemma <Gemma.Smith@dpac.tas.gov.au>; Ingham, Courtney <Courtney.Ingham@dpac.tas.gov.au>
Cc: Kelly, Carmen <Carmen.Kelly@dpac.tas.gov.au>; Bray, Ella <Ella.Bray@dpac.tas.gov.au>; Hegarty, Corinne <Corinne.Hegarty@dpac.tas.gov.au>
Subject: RE: R2407-008 - enquiry response - FW: Redactions in white

Thanks Gemma

I’m sure I’ve read it somewhere too but can’t remember where.

From: Smith, Gemma <Gemma.Smith@dpac.tas.gov.au>
Sent: Tuesday, July 16, 2024 1:56 PM
To: Hutton, Bridget <Bridget.Hutton@dpac.tas.gov.au>; Ingham, Courtney <Courtney.Ingham@dpac.tas.gov.au>

Cc: Kelly, Carmen <Carmen.Kelly@dpac.tas.gov.au>; Bray, Ella <Ella.Bray@dpac.tas.gov.au>; Hegarty, Corinne <Corinne.Hegarty@dpac.tas.gov.au>
Subject: RE: R2407-008 - enquiry response - FW: Redactions in white

I'm sure I've read something about redacting in white in an Ombudsman's decision. I also think it was raised at one of the Ombudsman-run training sessions.

From: Hutton, Bridget <Bridget.Hutton@dpac.tas.gov.au>
Sent: Tuesday, July 16, 2024 1:46 PM
To: Ingham, Courtney <Courtney.Ingham@dpac.tas.gov.au>
Cc: Kelly, Carmen <Carmen.Kelly@dpac.tas.gov.au>; Bray, Ella <Ella.Bray@dpac.tas.gov.au>; Hegarty, Corinne <Corinne.Hegarty@dpac.tas.gov.au>; Smith, Gemma <Gemma.Smith@dpac.tas.gov.au>
Subject: FW: R2407-008 - enquiry response - FW: Redactions in white

Hello Courtney

I'm not sure that this entirely answers your question about why we don't redact in white, but it does highlight the fact that the Ombudsman's Manual doesn't mention redactions at all!

Should Leah have anything additional to say on the subject, I will forward her advice to you.

Cheers
Bridget

From: Ombudsman RTI <RTI@ombudsman.tas.gov.au>
Sent: Tuesday, July 16, 2024 10:51 AM
To: Hutton, Bridget <Bridget.Hutton@dpac.tas.gov.au>
Subject: R2407-008 - enquiry response - FW: Redactions in white

Dear Bridget

Thank you for your enquiry addressed to Leah to which I provide the following response.

There is no statutory requirement for information that is in document form to be blacked out when it is redacted. Public authorities may have their own policy and procedures as to how the redaction task is to be approached.

I am not aware of any written guidance of this office in relation to the application of redaction to exempt information and I didn't recall it being a topic in the past 18 months of newsletters and after a quick search wasn't able to locate a note on it. We will look to include a practice tip on redactions in a coming edition of the newsletter.

For consistency and transparency the blacking out of text is the approach recommended by the Ombudsman. This approach is consistent with other jurisdictions.

The blacking out of text is accepted practice and is considered the standard and best practice for a number of reasons, such as:

- It avoids doubt about where redaction begins and ends. White redaction runs the risk of it being unclear to a reader where an exemption has been applied to information;
- It avoids confusion about blank space and possible redaction (such as a blank page);
- It is particularly helpful for line by line redactions where a nominal exemption is applied to one or a few words, white space in those circumstances it may not be apparent that information has been redacted;
- Blacking out, particularly using software, completely obscures exempted text and prevents it from being accidentally visible;
- It is effective for both hardcopy and electronic documents;

- For information other than text, such as photographs, graphs or tables, it is the preferred way to cover the information that may be in various colours.

There may be times when white might be preferable for showing there is an amendment, such as to a document with a dark or black background, but that would be infrequent. Extra caution would be required if redacting in white on a white page to avoid inadvertent redaction.

I further note that it is most helpful to an applicant, and also this office on external review, when the relevant exemption provision is noted against the redacted information. For example, notation of the provision in red to highlight it is an amendment to the original document. This applies for black redaction but would equally apply if white redaction was applied. It must be apparent to the reader where the text has been changed.

Maybe with more background to the question, eg whether there is a perceived problem with the blacking out of text or DPAC is looking to improve practices and procedures or whether there have been instances of white redaction being applied, I could obtain some further guidance for you if needed.

The online Manual should be searchable. After opening the pdf document Ctrl + F usually enables text search of it. I have tested it today, so please let us know if that function is not working for you.

Lastly, I will confirm with Leah next week whether there is anything she would like to add to the above or resources she has to share with you. In the meantime feel free to let me know any further background to the question or if you have any related queries.

Kind regards,



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Please let me know if you have accessibility needs or communication preferences.

Ombudsman Tasmania acknowledges the traditional owners of country throughout Australia and their continuing connection to land, culture and community. We pay our respects to elders past and present.

Right to Information Decision Bulletin

Would you like to be notified each month of the Ombudsman's latest external review decisions under the 2009? Send your name and email address to rti@ombudsman.tas.gov.au to subscribe to the *Right to Infor*

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From: Hutton, Bridget <Bridget.Hutton@dpac.tas.gov.au>
Sent: Monday, July 15, 2024 1:25 PM
To: Ombudsman RTI <RTI@ombudsman.tas.gov.au>
Subject: FW: Redactions in white

Good afternoon

I received an out of office reply from Leah Dorgelo and would be grateful should another officer from the Ombudsman's Office be able to answer my question as below.

Kind regards
Bridget

From: Hutton, Bridget
Sent: Monday, July 15, 2024 1:22 PM
To: Dorgelo, Leah (OHCC) <Leah.Dorgelo@ombudsman.tas.gov.au>
Subject: Redactions in white

Hello Leah

I hope all is well with you?

I've been asked a question about why we don't redact in white.

Apart from the obvious that if we did it would be very hard to see where information had been redacted and therefore misleading, I couldn't find anything easily although I'm sure I've read it somewhere.

I tried looking at the Ombudsman's Manual online which is dated 1 July 2010, but it's not possible to search for words within the document, so I wonder if it would be worth the Ombudsman's Office putting the manual up in HTML or publishing the manual as a searchable PDF?

In the meantime, it occurred to me that at some point I may have read about not redacting in white in one of the Ombudsman's newsletters and would be grateful should you be able to point me towards the correct one.

Thank you in anticipation.

Kind regards
Bridget

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Respect + Excellence + Professional + Customer focus + Working together

Smith, Gemma

From: Ombudsman RTI <RTI@ombudsman.tas.gov.au>
Sent: Tuesday, 30 July 2024 4:40 PM
Subject: Right to Information Newsletter - July 2024



OMBUDSMAN TASMANIA
Right to Information Delegate Newsletter

JULY 2024

Good afternoon delegates,

Welcome to our July Delegate Newsletter. This monthly newsletter contains recent external review decisions of the Ombudsman, practice tips, and other RTI information, which we hope will be of interest to delegates.

Please let us know if you have questions or suggestions for content by emailing rti@ombudsman.tas.gov.au.

Practice tip: Making redactions

After receiving enquiries about whether redactions can be applied in white, Ombudsman Tasmania provides the following practice tip regarding the process of redacting information in documents.

The key considerations, when redacting information, are where and why information has been redacted. The application of exemptions should be clear to the reader. This aligns with the requirements in the RTI Act that *a copy of information that is provided with exempt information deleted is to have included on it a note to the effect that the copy is not a complete copy of the original information (s18(2))* and that reasons for a decision to redact exempt information must be provided (s22). It is vital that redactions are easily identifiable so that applicants can determine where redaction has been applied and the exemption provision relied upon. Unclear redactions can lead to a breach of the s18(2) requirements if it is not apparent that the document is not a complete copy of the information.

Though the Act does not prescribe the manner in which redactions should be applied, the use of black or dark coloured redactions is the approach recommended by the Ombudsman. This is effective in the widest number of circumstances which usually involve the redaction of black written text contained on a document with a white (or light) background, such as a Microsoft Word document. It is considered the standard and best practice for visibility of any redaction to the reader and to effectively hide the information not to be released. Use of white redactions can be appropriate in circumstances where the information to be redacted is light written text on a document with a black (or dark) background. For information other than text, such as photographs, graphs or tables, black redactions are preferred to cover information that may be in various colours.

Preferably individual redactions are annotated with a note specifying the exemption provision relied upon for refusal to release the information. Doing so makes it easier for the applicant to understand the grounds on which the information is being withheld. Example: [REDACTED] s35 ____

Clearly identifiable and labelled redactions make it easier for the applicant to decide whether or not they will seek a review. It also makes it easier for the Ombudsman in the external review process.

The Ombudsman discourages the use of black texta or marker for manually applied redactions, as it is not always an effective method. Unfortunately, information can often still be legible despite attempts to remove it with black texta or marker. The Ombudsman encourages the use of redaction software where possible. In the event that documents are being redacted manually, take extra steps to ensure it is fully effective.

Should watermarks or annotations be applied to documents released to an applicant, please also ensure that these do not obscure the information. Accordingly, if watermarks are used, it is recommended that these be small and light in colour.

Lastly, always ensure that you have done a quality assurance check of your redactions to make sure information intended to be released is unredacted and exempt information is actually removed in your final draft. This is especially important where there is a large volume of information being assessed, or the request relates to particularly sensitive information.

For further guidance on this, please do not hesitate to reach out to us on rti@ombudsman.tas.gov.au.

Ombudsman Tasmania External Review Statistics for 2023-24

Delegates may be interested in the following overview of the Ombudsman's RTI statistics for the financial year ending 30 June 2024.

- 39 formal decisions on external review applications were finalised in 2023-24, a significant increase on the 22 finalised in the 2022-23 financial year.
- At the end of the 2022-23 financial year there were 89 open external review applications. At the end of the 2023-24 financial year, this had reduced to 59 open external review applications.
- At the end of 2022-23 financial year external reviews were averaging 602 days open. At the end of the 2023-24 financial year, average days open had more than halved to 293 days.

More information will be included in our annual report but we are pleased that these statistics clearly show the progress that has been achieved in reducing the historical backlog of external review applications awaiting finalisation.

Recent Decisions

The most recent decisions are available [here](#) by date of release or to view decisions by section of the Act click on [Decisions By Section](#).

Please find following the summary of the decisions released since our last Decision Bulletin (full decision in link):

[Robert Hogan and University of Tasmania](#)

The applicant, Mr Hogan, had previously made three assessed disclosure applications under the Right to Information Act 2009 (the Act) to the University of Tasmania (the University) for information relating to the University's campus move. All three applications were refused on the basis of s12(3)(c)(ii) of the Act that the requested information will become available, in accordance with a decision that was made before receipt of the application, as routine disclosure or required disclosure.

Mr Hogan made a further application for information under the Act for evidence demonstrating that a prior decision had in fact been made to release the information sought in the three original applications. His application was refused initially by the University and Mr Hogan sought internal review. An explanation but no information was provided in the internal review decision. Mr Hogan then sought external review.

The review was on the basis of s45(1)(e) and whether the University had conducted a sufficient search for relevant information. In the course of the review, the University located a file note of the relevant decision and released this to Mr Hogan.

The Ombudsman found that the University initially did not undertake a sufficient search for information responsive to the assessed disclosure request. However, by the conclusion of the external review, the University had taken appropriate steps to rectify the situation.

Lee Moyle and University of Tasmania

Mr Lee Moyle was a volunteer Amateur Radio Assessor with the Australian Maritime College of the University of Tasmania (the University). On 26 April 2021, Mr Moyle applied to the University under the Right to Information Act 2009 (the Act) for information held by the University relating to himself.

The University's original decision determined that some information was exempt from release under sections 31 (legal professional privilege), 35 (internal deliberative information) and 36 (personal information). Mr Moyle sought internal review. On internal review the University affirmed its initial decision and provided additional reasons in relation to the application of ss35 and 36.

Mr Moyle sought external review of this decision. The Ombudsman found that the exemptions claimed pursuant to ss31, 35, and 36 should be varied.

Graham Murray and City of Hobart

Mr Graham Murray has an interest in the cable car project (the project) that was proposed for kunanyi/Mt Wellington. On 2 November 2020 he made an assessed disclosure application to the City of Hobart (Council), under the Right to Information Act 2009, for a range of information about the project, including a planned burn off.

There was a significant volume of information identified, collated and assessed. Mr Nick Heath, the then principal officer and CEO of the Council, delivered his decision in four parts, releasing some information and relying on s35 (internal deliberative information) and s37 (information relating to business affairs of third party) to exempt other information. In relation to the burn off, he found that there was no information responsive to the request, which gave rise to a question about the sufficiency of Council's searching for relevant information.

The Ombudsman determined that:

- the exemptions claimed pursuant to ss35 and 37 were varied; and
- the searching undertaken in relation to the burn off was sufficient.

Clem Newton-Brown and Flinders Council

On 23 June 2023 Mr Clem Newton-Brown submitted an application for assessed disclosure under the Right to Information Act 2009 (the Act) to Flinders Council (Council). As part of this application Mr Newton-Brown requested three items of information related to a development application Mr Newton-Brown submitted to Council. This development application proposed to build visitor accommodation on Little Dog Island.

On 16 August 2023 a decision was issued to Mr Newton-Brown by Council's General Manager, Mr Warren Groves. Mr Groves determined that some information responsive to Mr Newton-Brown's application was exempt from disclosure pursuant to ss31 (legal professional privilege) and 36 (personal information) of the Act.

Mr Newton-Brown sought external review of this decision and the Ombudsman determined that Council's use of ss31 and 36 should be varied.

Daniel Winston and City of Hobart

Mr Daniel Winston is a resident of the City of Hobart local government area. On 7 June 2022 he made an application to City of Hobart (Council) for assessed disclosure under the Right to Information Act 2009 (the Act) seeking the name of a person who had made a complaint to Council about an alleged environmental nuisance caused by Mr Winston.

Council relied upon s36 of the Act to exempt the name of the complainant. Mr Winston sought external review.

The Ombudsman determined that the exemption claimed pursuant to s36 was affirmed.

Past Decisions

The Ombudsman's external review decisions since 2016 are published at www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions and general information about the RTI jurisdiction and the *Right to Information Act 2009* (the Act) is available on our website: Ombudsman Tasmania.

Mailing List

To add or remove subscribers from the mailing list please email the relevant details to the RTI team at Ombudsman Tasmania at rti@ombudsman.tas.gov.au.

Kind regards,



Right to Information team

Ombudsman Tasmania

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Ombudsman Tasmania acknowledges the traditional owners of country throughout Australia and their continuing connection to land, culture and community. We pay our respects to elders past and present.