

COMMENTARY 5 WAMA Office

FOI and Refusal to access LEGAL OPINION

An FOI enquiry was undertaken in 2011/12 in order to find out why Mooring Regulations 1998 r.16 (1)(a) & (b) had been recently reinterpreted by staff within the Mooring Office and whether that new interpretation was in accordance with the intention and essence of the Regulations. During December 2010 there had been a newspaper article that declared the Department had a 'legal opinion' in respect to the new interpretation of the regulations. Access under FOI to that legal opinion was also requested.

Access to older files was granted but access to the legal opinion was denied on the grounds explained as follows.

Complete document at reference:

FOI 5 Mooring Regs 1998 FOI August 2011 letter refusal to access legal opinion

FREEDOM OF INFORMATION APPLICATION 111 - NOTICE OF DECISION INFORMATION PERTAINING TO MOORING REGULATIONS 1998

I refer to your application made under the Freedom of Information (FOI) Act seeking access to:

- 1) File 297 of 92 and any later files, discussion, letters, information memos, explanatory memoranda relevant to the construction and interpretation of Mooring Regulations 1998.
- 2) Legal opinion obtained by Marine Operations in late 2010 / early 2011 related to interpretation of reg 16(i)(a) & (b) of mooring regulations 1998.

...

2) You have been refused access to copies of legal opinion obtained from Legal Services by Marine Operations related to interpretation of reg 16(i)(a) & (b) of mooring regulations 1998, pursuant to Clause 7 - Legal Professional Privilege.

...

Clause 7 - Legal Professional Privilege.

- (1) *Matter is exempt matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege)*

Extracts from FOI Coordinator 3rd August 2011

Why would a public service department in the form of the Mooring Office withhold a legal opinion given on the administration of mooring sites that are used by the public of Western Australia?

The reinterpretation of the Mooring Regulations 1998 esp. r.16 was a complete change of management circumstances that brought upon mooring owners a totally unfair restriction related to the transfer of mooring sites. Why would the rationale for imposing such a restriction be withheld from public scrutiny especially on the 'ground of legal professional privilege'?

The Mooring Regulations 1998 were created for the beneficial use of the boating public of Western Australia and on the basis of minimising opportunities for official corruption and perceptions of unfair dealing. Why has the so called 'legal opinion' been withheld from public view?

It is absolutely necessary that the legal rationale or the 'legal opinion' be released for scrutiny by mooring owners of Western Australia if there is to be any hope of a successful Mooring Regulation Streamline Review being undertaken.

Mooring owners have the absolute right to know why their regulatory rights, obligations and privileges have been so seriously impinged upon by the Department of Transport Mooring Office since December 2010.

The legal opinion must be released.

WAMA Office June 2015