



Mares, Peter. (2007). Freedom from Information.

Published as:

Mares, Peter. (10 November 2007). Can we get back to you on that (after the election)?
The Age.

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Freedom from Information

The free speech campaign by a coalition of major media organisations, including Fairfax (publishers of The Age) has put freedom of information on the electoral agenda. Kevin Rudd has promised improved access to government documents if Labor wins office and the Coalition has indicated that it too will have 'something to say' about the issue before polling day. The proof will be in the post election pudding but ABC Radio National's Peter Mares lives in hope, since from his experience of FOI there is plenty of scope for reform.

In mid-September I interviewed Communications Minister Senator Helen Coonan on ABC Radio National about the alarming statistics used in the government's \$22 million *NetAlert* information campaign. Statistics like this one: 'over half of 11-to-15 year olds surveyed who chat online are contacted by strangers'.

I had seen the statistic on a billboard at a tram stop. As a parent I was concerned. As I journalist I was suspicious. As both parent and journalist I wanted to know more.

I went to the *NetAlert* website and downloaded the booklet 'Protecting Australian families on line' (subsequently sent to every household in Australia). On page 8, I found a statistic similar to the one I had seen at the tram stop: 'In a recent study, 40 per cent of children who chat online said they had been contacted by someone they didn't know'.

This statistic was supported by a footnote referring to a survey: 'A snapshot of online behaviour and attitudes of children', Wallis Consulting Group, July 2007. Assuming this to be published research, I searched for the document online. After failing to locate it, I rang the Wallis Consulting Group to ask for a copy, only to be told that the research had been commissioned by the government and could not be made public without official permission. I rang the *NetAlert* 1800 information line, but the man who answered my call had no idea what I was talking about. I turned to the Australian Communications Media Authority, which manages the *NetAlert* infoline and was directed from there to the Department of Communications, Information Technology and the Arts (DCITA). A helpful public affairs official emailed me a four page summary of the research that had been made public by the Minister. But it did not contain the information I sought. In fact it raised more questions than answers because the data in the summary did not appear to match either of the two statistics quoted above.

I went back to DCITA and asked again for the full report. I was referred to the Minister's office. Her media minder told me the document could not be made public because it contained sensitive personal information about individual children who been stalked or otherwise abused online. This was stretching credibility. The research summary released by the Minister clearly identifies the study by the Wallis Consulting Group as a survey. The *NetAlert* booklet sent to households *does* include case studies (with names changed) but

these are all drawn from 'the *NetAlert* help line or the Australian Federal Police' – not from the Wallis Consulting Group survey report (which is cited separately).

I then interviewed the Minister on *The National Interest* on ABC Radio National and asked her for the data to back up the alarming *NetAlert* statistics. (See: <http://www.abc.net.au/rn/nationalinterest/stories/2007/2033123.htm>)

In a robust exchange, Senator Coonan promised to *consider* releasing more of the research, given the issues I had raised. When I followed up with her office a few days later the response was a frosty 'we'll get back to you'. Anticipating (correctly as it turned out) that no one would 'get back to me', I took the additional step of lodging a freedom of information request.

For speed and convenience I tried to make my request by phone or email but this proved impossible. Every FOI application attracts a \$30 application fee that must be paid in advance. The only way to pay is with a cheque sent in the mail, because the department lacks credit card facilities or any mechanism for electronic payment.

I posted off my \$30 cheque, still optimistic that I might get access to the research prior to the federal election since, under the Act, the department must respond to an FOI request within 30 days. After all, the document in question was clearly identified in a government brochure sent to every household in Australia, so it could not be too difficult to locate in departmental files. I reasoned that the material was unlikely to be exempt for reasons of commercial sensitivity or cabinet confidentiality, and surely it was not the kind of material that would 'cause damage to relations between the Commonwealth and a State'. On this basis, I assumed access would be straightforward. I was wrong.

Three weeks after submitting my request I received a response. I was informed that under Sections 27 and 15(6) of the FOI Act the time limit for processing my application had been extended (doubled) from 30 days to 60 days. This was because my request necessitated consultation with a third party 'regarding release of documents concerning their business affairs' (presumably the Wallis Consulting Group).

I was also told that the cost of my FOI request would be \$138.72 cents. This was in addition to the \$30 application fee and comprised \$4 worth of photocopying, \$15.25 for search and retrieval time (1.02 hours at \$15 per hour) and \$119.46 for 'decision making time' (5.97 hours at \$20 per hour). Just who was making decisions and about what, I'm not quite sure.

I was told that if I intended to pursue my application, then I would need to provide a deposit of 25 per cent of these costs (\$34.68). Again, this could only be paid with a cheque sent in the mail. And until the money arrived, my FOI application was on hold. In other words, each day of delay extended the statutory time limit for the department to respond to my request.

I sent off a cheque immediately. Unfortunately the mail must have been running slow that week, because my payment took six days to wend its way from Melbourne to the correct desk in Canberra. And so in a subsequent letter, I was informed by that 'the new date for notifying a decision' regarding access to the documents I had requested was the 29th of November, five days after the federal election.

I was also informed that I my request for a refund of the original \$30 application fee had been turned down. I had requested the fee be remitted on the basis that the research underpinning a \$22 million public information campaign was clearly a matter of 'public interest' (as allowed under the Act). Unfortunately I had failed to say what I would actually *do* with the research if and when I received it. I had assumed – naively - that my intentions were obvious. I had stated that I was making the request in my professional capacity as a journalist and thought it self-evident that I planned to report on the information revealed to me. However, this was not apparent to the 'responsible decision maker' (a departmental assistant secretary). She rejected my application to remit the application fee on the basis that I had 'not indicated whether the information, if released, would actually come to the attention of the public'.

It was 'not inconceivable', she argued, that the 'particular information ... if released, may not actually be brought to the public's attention ... because, for example the information may not be considered to be particularly newsworthy...'.

There is a catch 22 here. To qualify for a waiver of the \$30 FOI application fee, I must demonstrate that release of the documents is 'in the general public interest or in the interest of a substantial section of the public'. The proof rests on an undertaking that I will report on the contents of the documents after they are released to me. Yet since I do not know in advance what the documents contain, I cannot plausibly guarantee that they will prove 'sufficiently newsworthy' to warrant editorial space. The kicker is that the longer my FOI application takes, the less newsworthy the documents are likely to become.

I could have asked for an 'internal review' of the decision not to remit my \$30, but that would have attracted another \$40 application fee. And frankly, life is too short.

Peter Mares presents 'The National Interest' every Sunday at noon on ABC Radio National.