



Office of the Information Commissioner

DISABILITY ACCESS AND INCLUSION

PLAN 2014

JULY 2014

This document is available in other formats upon request.

Albert Facey House
469 Wellington Street
PERTH WA 6000
Ph: 6551 7888
E: info@foi.wa.gov.au

ROLE OF THE INFORMATION COMMISSIONER

The office of Information Commissioner is established by s.55(1) of the *Freedom of Information Act 1992* (**the FOI Act**) and the occupant is directly accountable to Parliament for the performance of the functions prescribed by the FOI Act. The Information Commissioner is independent of executive government and reports directly to the Parliament and not to, or through, a Government Minister.

The main function of the Information Commissioner is to provide independent external review of agencies' decisions by dealing with complaints about decisions made by agencies under the FOI Act. The Commissioner is supported by 11 FTEs in the Office of the Information Commissioner (**OIC**).

Other responsibilities prescribed by the FOI Act include:

- ensuring that agencies are aware of their responsibilities under the FOI Act [s.63(2)(d)];
- ensuring members of the public are aware of the FOI Act and their rights under it [s.63(2)(e)];
- providing assistance to members of the public and agencies on matters relevant to the FOI Act [s.63(2)(f)]; and
- recommending to Parliament legislative or administrative changes that could be made to help the objects of the FOI Act be achieved [s.111(4)].

The Commissioner has a statutory duty to undertake these functions and the OIC accordingly has two service teams – *Resolution of Complaints (External Review)* and *Advice and Awareness*.

The following principles or values are part of the corporate philosophy of the OIC:

- Being accepted by participants as an independent and impartial review authority.
- Being recognised by agencies as a model of “best practice” for the FOI complaint review process.
- Serving as an example to agencies of accountability and responsibility.

The OIC aims to provide an FOI complaint mechanism and advisory service which is independent, objective and fair, and which balances the competing needs of applicants, agencies and Parliament, subject to the requirements and processes prescribed in the FOI Act.

ACCESS AND INCLUSION POLICY STATEMENT

The OIC is committed to ensuring that people with disability, their families and carers are able to fully access the range of services and facilities of the office. The OIC will, whenever required, consult with people with disability, their families and carers and disability organisations to ensure that barriers to access and inclusion are addressed appropriately.

The OIC is committed to achieving the seven desired outcomes of its Disability Access and Inclusion Plan (**DAIP**). These are:

1. People with disability have the same opportunities as other people to access the services of, and any events organised by, the OIC.
2. People with disability have the same opportunities as other people to access the buildings and other facilities of the OIC.
3. People with disability receive information from the relevant public authority in a format that will enable them to access the information as readily as other people are able to access it.
4. People with disability receive the same level and quality of service from the staff of the OIC.
5. People with disability have the same opportunities as other people to make complaints to the OIC.
6. People with disability have the same opportunities as other people to participate in any public consultation by the OIC.
7. People with a disability have the same opportunities as other people to obtain and maintain employment with the OIC.

WHAT RIGHTS DO I HAVE UNDER THE FOI ACT?

The purpose of the FOI Act is to “... *provide for public access to documents, and to enable the public to ensure that personal information in documents is accurate, complete, up to date and not misleading ...*”.

The right applies to documents held by Ministers, most State government agencies (such as departments, public hospitals, public universities and State government authorities) and local government. The access rights under the FOI Act do not apply to documents which are already publicly available for inspection or purchase.

Documents accessible under the FOI Act include paper records, plans and drawings, photographs, tape recordings, films, videotapes or information stored in a computerised form.

Individuals can also apply to have personal information about them in government documents amended if that information is inaccurate, incomplete, out of date or misleading.

It is important to note that applications under the FOI Act are first made to the agency that holds the documents concerned, and decisions on access are made by that agency. The OIC reviews those decisions if the applicant is dissatisfied with the outcome and requests an external review by the Information Commissioner.

INFORMATION, SERVICES AND FACILITIES

The OIC has two service outputs – Resolution of Complaints (External Review) and Advice and Awareness.

Resolution of Complaints (External Review)

External review applications are lodged by applicants who have made an FOI application to a WA State or local government agency to access documents or have personal information about them amended, and are dissatisfied with the outcome at agency level and request the Information Commissioner to conduct a review of the agency's decision.

The intent of the FOI Act is to ensure that proceedings on external review are conducted with as little formality and technicality as the requirements of the FOI Act and a proper consideration of the matters before the Information Commissioner permit. Therefore, when dealing with complaints, the policy of the Information Commissioner is to ensure that wherever possible the conduct of external review proceedings is not unduly legalistic or formal. Accordingly, the preferred method of resolving complaints is by negotiating a conciliated outcome between the parties. However, where a conciliated outcome cannot reasonably be achieved, the Information Commissioner is required to make a determination and publish a written decision with reasons.

Parties to an external review can appeal the Information Commissioner's decision to the Supreme Court, but only if they believe the decision is incorrect on a point of law.

Advice and Awareness

The Advice and Awareness team provides members of the public and agencies with assistance in exercising their respective rights and obligations under the FOI Act. The OIC encourages agencies to develop, promulgate and implement policies and procedures dealing with information disclosure. Such policies can make a positive contribution to achieving the objects of the FOI Act.

Officers delivering the Advice and Awareness output also emphasise the spirit of the FOI Act when delivering advisory services. Wherever possible, agencies are encouraged to release information outside the FOI process where it is reasonable to do so or, where necessary, to follow the correct processes for dealing with an access application or an application for amendment of personal information under the FOI Act. Policy development within agencies which establishes routine information disclosure outside formal FOI processes is encouraged so that the impact of the obligations placed on agencies by the FOI Act on the day-to-day operations of those agencies is minimised. Many potential disputes are also resolved informally with assistance from the OIC.

The OIC conducts regular workshops, forums, briefings, seminars and presentations for FOI Coordinators, decision-makers, CEOs and other agency staff. These are conducted on an interactive basis, allowing for immediate response to questions and clarification of issues concerning FOI procedures and practices.

The OIC provides speakers in response to invitations from organisations requiring an explanation of the FOI process. Briefings are tailored in each case to meet the needs of applicants or agencies.

None of the core functions of the OIC are contracted out.

PEOPLE WITH DISABILITY WHO USE OUR SERVICES

The right to make an FOI application to an agency is available to any person. Section 12(1) of the FOI Act outlines the requirements of a valid FOI application, as follows:

- “(1) The access application has to -*
- (a) be in writing; and*
 - (b) give enough information to enable the requested documents to be identified; and*
 - (c) give an address in Australia to which notices under this Act can be sent; and*
 - (d) give any other information or details required under the regulations; and*
 - (e) be lodged at an office of the agency with any application fee payable under the regulations.”*

The right to make an FOI application should not be restrictive to those who have a disability. However, the very nature of the requirements in section 12(1) could pose a barrier to those with a disability. For instance, a person with severe vision

impairment or neurological disabilities being required to lodge an application in writing, or a person with mental or intellectual disabilities ensuring they provide meaningful correspondence to allow the required information to be identified.

It is important to note that, as outlined above, FOI applications are made directly to the agency that holds the documents a person wishes to access. They are not made directly to the OIC – it is only if an applicant wishes to have an agency’s decision reviewed that they deal directly with the OIC in the external review environment. It is therefore incumbent on agencies, at this stage of the process, that they have their own DAIP in operation and can assist any person with a disability to make a valid FOI application.

In this regard, the FOI Act itself has specific provisions that go some way to ensuring all members of the public have the opportunity to make valid FOI applications, as follows.

<p>Section 11(2) and (3)</p>	<p>(2) <i>If the circumstances of the applicant require it, an agency has to take reasonable steps to help a person to make an access application to the appropriate agency in a manner that complies with this Act.</i></p> <p>(3) <i>In particular, if an application does not comply with the requirements of section 12 the agency has to take reasonable steps under subsection (2) to help the applicant to change the application so that it complies with those requirements.</i></p>
<p>Section 98(b)</p>	<p><i>Without limiting the ability of persons to make applications on behalf of other persons generally, an access application or application for amendment may be made -</i></p> <p>...</p> <p>(b) <i>on behalf of an intellectually handicapped person by the person’s closest relative or guardian.¹</i></p>

OIC Services

In respect of lodging an application for external review with the OIC, people with disability have the option of allowing someone (of their choosing) to do so on their behalf. However, this may not be preferable or suitable and the OIC acknowledges that a person with a disability should have the freedom to lodge their application and

¹ The term “intellectually handicapped person” is outdated, but it is the term currently used in the FOI Act. When an opportunity arises, the OIC will seek to argue that this be amended to “person with an intellectual disability”.

liaise with the OIC solely. It is the responsibility of the OIC to ensure they can do this.

In addition, it is incumbent on the OIC to ensure people with disability have the opportunity to liaise directly with OIC staff to obtain advice on their rights and obligations under the FOI Act. Brochures which provide general and specific advice are available in hardcopy or on the OIC's website, but this may not be accessible to some.

In order to cater for these situations, a consultation process was conducted, which is outlined below.

OIC Facilities

The OIC is situated at Albert Facey House, a newly refurbished Government building. The training and meeting rooms generally used are located on the ground floor and are wheelchair accessible. The toilet facilities on the ground floor also provide for disabled access. Wheelchair access is also catered for when accessing the OIC's offices, with the lifts providing low access buttons, and toilet facilities.

Consultation

The OIC advertised on its website a call for submissions on the accessibility of its services and facilities.

As advised by the Disability Services Commission in April 2014, it is also a requirement that public consultation should be advertised in a newspaper circulating throughout Western Australia. However, due to the Government's restriction on any advertising this financial year, this was not possible.

In addition, key external bodies with expertise in assisting people with a disability were consulted.

OIC staff were also consulted on any situations they have experienced (or that they envisioned) whereby people with disability have experienced difficulty in exercising their rights under the FOI Act, or accessing our other services.

Findings from the consultation process

Submissions were received from staff and external sources, and all suggestions have been included in the recommended actions that follow. In general, due to the recent refurbishment of the OIC's current location, there are no barriers for people with physical disabilities from accessing our facilities. Our office, the shared training/meeting rooms and all toilet facilities are all wheelchair accessible. The main issues identified relate to people with non-physical disabilities being able to access their rights under the FOI Act and communicate effectively with our office.

OBJECTIVES AND STRATEGIES TO OVERCOME IDENTIFIED BARRIERS

The following table outlines any identified barriers to accessing the OIC's facilities and services, and the planned course of action to improve them.

Outcome 1

People with disability have the same opportunities as other people to access the services of, and any events organised by, the OIC.

Provide a mechanism on the OIC website for people with disability to comment on access to our services, including being able to exercise their rights under the FOI Act.	December 2014
Ensure organised events consider accessibility for people with disability.	Immediate
Consult with relevant bodies to assist in consideration as to how people with disability can exercise their rights under the FOI Act.	March 2015

Outcome 2

People with disability have the same opportunities as other people to access the buildings and other facilities of the OIC.

Ensure physical access to the OIC's premises is equally available to all persons, regardless of disability.	September 2014
---	----------------

Outcome 3

People with disability receive information from the relevant public authority in a format that will enable them to access the information as readily as other people are able to access it.

Update publications and website advising that publications can be provided in alternative formats on request.	December 2014
Include audio links for publications on the website.	March 2015
Update relevant policies to ensure options for accessibility to publications for people with disability is included.	December 2014
Upgrade OIC website to ensure content meets WCAG guidelines.	March 2015

Outcome 4

People with disability receive the same level and quality of service from the staff of the OIC.

Create and disseminate to staff disability access and inclusion policy.	Immediate
Arrange training to staff on communicating with people with mental health issues or communication difficulties.	September 2014

Outcome 5

People with disability have the same opportunities as other people to make complaints to the OIC.

Ensure that current mechanisms to lodge complaints and/or grievances (internal or external) are accessible for people with disability.	September 2014
--	----------------

Outcome 6

People with disability have the same opportunities as other people to participate in any public consultation by the OIC.

Ensure requests for public consultations are conducted in a way that will invite and include people with disability.	Ongoing
Ensure the OIC's current DAIP is available for public comment.	August 2014

Outcome 7

People with a disability have the same opportunities as other people to obtain and maintain employment with the OIC.

Ensure that recruitment activities are accessible to people with disability.	Ongoing
Ensure staff with disabilities are provided with appropriate support to carry out their responsibilities.	Ongoing

MONITORING, REVIEWING AND REPORTING

To ensure the effectiveness of this DAIP, regular monitoring, reviewing and reporting is necessary.

Monitoring

Performance measures to monitor the extent to which the OIC's access and inclusion strategies have increased and enhanced the availability of services and facilities for people with disability are as follows:

- Include in various feedback forms section on access and inclusion for those with disabilities.
- Include feedback facility on the OIC's website on the accessibility and readability of the website and various publications.
- Publish the approved DAIP on the OIC's website and provide a feedback mechanism.
- Maintain data on the accessibility of our facilities whenever a training event or formal meeting is arranged.

Review

The *Disability Services Act 1993* requires that agencies review their DAIP every five years and submit the reviewed document to the Disability Services Commission. While the OIC is committed to doing this, more regular reviews can be conducted. Depending on the ongoing feedback of stakeholders, the OIC will review and update the DAIP as required. Feedback will continually be sought through the monitoring process which will assist in enhancing the DAIP at any time.

In any event, the strategies outlined in this DAIP should be reviewed yearly, to ensure implementation and relevancy.

Reporting

Reporting in the OIC's annual report on the actions undertaken to implement the DAIP is mandatory and, in addition, a progress report is required to be lodged with the Disability Services Commission by 31 July each year. These two requirements provide the incentive to ensure a yearly review is conducted, and a new DAIP lodged with the Disability Services Commission if amendments are made as a result of the review.

Promotion

The DAIP will be made available on the OIC's website, and advice of its availability advertised in the *West Australian* newspaper.

Agents and contractors

Agents and contractors to the OIC will be expected to conduct their business in a manner consistent with the principles of this DAIP. This will be specified during any contract negotiation with external parties, and an appropriate mechanism put in place for those parties to report back to the OIC on their compliance. As part of future DAIP reviews and monitoring, agent and contractor compliance will be included.