



**FREEDOM  
OF INFORMATION**  
ANNUAL REPORT 2000-2001

**FOREWORD**

# Foreword



*Bronwyn Keighley-Gerardy*

When the Freedom of Information Bill 1992 came before the Western Australian Parliament for debate, all political parties embraced its ideals of openness and accountability. After almost 8 years of government activity under FOI legislation, it is time to ask whether FOI is achieving the results intended by Parliament and, more importantly, the results wanted and expected by the public.

The public requires more than ‘lip service’ to be paid to freedom of information by Government. It requires a potent and robust access law that delivers results and works in favour of public access, rather than in favour of secrecy. It is a truism that bureaucracies around the world are not known as champions of FOI. Yet I have admiration and respect for some of the FOI coordinators in Western Australia who act as their departmental conscience for openness and accountability. Many of the coordinators have been in their positions from day one. As a group, they have maintained their enthusiasm for and commitment to FOI, sometimes in the face of hostile management and an organisational culture that is slow to change.

Since 1993, there have been 22 various Acts of the WA Parliament that have effected amendments to the *Freedom of Information Act 1992* (the FOI Act). Some of the amendments involved cosmetic name changes only; others were more substantive and have had the effect of increasing the range of documents and information that could not be accessed under the FOI Act. Only one piece of legislation actually strengthened the FOI Act by including sub-contractors associated with the contracting-out of court security and custodial services within its purview.

## ***Legislative and Administrative Changes***

In each of my Annual Reports to Parliament since 1993, I have identified legislative changes that could be made to strengthen the rights of access in Western Australia and to help the objects of the Act to be achieved. A review of the FOI Act in 1996 also identified areas where legislative change was considered necessary. However, nothing has been done. There were signs following the change of government in February 2001 that accountability and FOI might be revitalised. However, it remains to be seen whether FOI will change for the better. I suspect that the legislative program of the government may be exploited by agencies seeking to either extend the range of documents and information that is inaccessible under the FOI Act, or the range of exempt agencies.

An example on point is the proposed *Gene Technology Bill 2001*, in which it was proposed to amend the FOI Act to include an additional exemption for confidential commercial information of a kind described in clause 187 of the proposed Bill. The effect of the proposed amendment would be to limit my role as Information Commissioner to merely confirming that the information in question is subject to a declaration made by the Commonwealth Gene Technology Regulator. Under that proposal there would be no independent review of a decision on access made by the agency concerned, or whether in fact the information sought is commercially sensitive.

Already I have become aware that the practice under the previous Government of Ministers requesting details from their departments about FOI applications, including the names of FOI applicants, may be continuing. Apart from those instances where a Minister has a legitimate “right to know”, I remain convinced that the practice of disclosing the names of ordinary FOI applicants, without their knowledge or consent, is wrong and may breach accepted privacy principles.

### ***The amendment of Clause 5(1)(b)***

One exemption in particular puts Western Australia out of step with all other FOI jurisdictions throughout the world. The exemption for law enforcement documents is designed to ensure that current and unsolved investigations conducted by law enforcement agencies are not prejudiced by disclosures under FOI.

The approach taken in the WA FOI Act is that the exemption applies to documents that would *reveal* any investigation conducted by any agency involving a contravention or possible contravention of the law. A contravention of the law includes a breach of, or a failure to comply with regulations, as well as local government By-laws, Codes of Ethics and human resource management standards made under the *Public Sector Management Act 1994*.

The documents of law enforcement bodies are adequately protected under FOI legislation both nationally and internationally. However, the existence of the exemption in clause 5(1)(b) in its present form in WA, provides a convenient and ready justification for a myriad of agencies to hide behind a cloak of confidentiality, often without good reason. Based on the complaints made to me, discretionary disclosures (which may be made under s.3(3) of the FOI Act) of documents relating to investigations made by regulatory agencies are few and far between, even when the documents only relate directly to the applicant and there is no clear or readily apparent prospect of any harm or injury resulting from disclosure.

When applicants are denied access to documents resulting from complaints made by them to agencies, or they are denied access to investigative material relating to them, whether or not charges or disciplinary proceedings have resulted, it is inevitable that the FOI Act is viewed as a “toothless tiger”. My impression is that applicants do not understand how or why the exemption in clause 5(1)(b) is applied by agencies to refuse access, and they do not accept the interpretation of that clause made by the Supreme Court in Western Australia.

The Member for Nollamara in Opposition proposed a remedy to this situation in a Private Member’s Bill introduced to Parliament in 1998. However, that Bill was defeated along party lines in the Legislative Assembly. I remain hopeful that the enthusiasm for change exhibited then by the Member and his parliamentary colleagues has not been dimmed by the reality of being the Government.

In its present form, clause 5(1)(b) remains an anomaly that is unjustifiably broad in its application to documents and its continued presence remains a blight on the FOI landscape in Western Australia. If other Western Australian laws can be amended to bring this State into line with those in other States, then the FOI Act should likewise be amended in the critical areas of its exemption clauses to bring it into line with national and international FOI standards.

### ***Agency FOI Report Cards***

There are no FOI report cards on agencies in this report. I will resume the practice of examining the FOI practices of agencies next year, after the new departments have had a chance to consolidate access procedures and policies following the changes to the structure of the public sector made by the Machinery of Government Task Force.

### ***The Operation of FOI***

The number of applicants who used FOI to access information increased during the year by nearly 10% (Fig. 1). The rate of access has also increased. (Fig. 4). There has been a steady decrease in the days taken by agencies to deal with applications, falling to an average of around 17 days in 2000/01 (Fig. 2). At the same time, the average charge imposed by all agencies for giving access has remained more or less steady at around \$15 per application (Fig. 3).

Overall, the majority of applications are for personal information but, as indicated in Figures 5 and 6, the impact on local government agencies shows the reverse. This no doubt reflects the level of community interest in local issues, as well as the fact that local authorities, compared to State Government agencies such as hospitals, hold less personal information. Applications for access to non-personal information are the type of request that hold State and local government agencies accountable for actions and decisions of broader significance to members of the public.

### ***Who makes requests for access to non-personal information?***

Generally, applicants fall into one of the following groups:

- Businesses or organizations
- Individuals
- Members of Parliament
- Media

In 2000/01, based on the ten agencies topping the list for non-personal requests (Fig. 7), the largest group of applicants comprised firms of solicitors, businesses and community groups, who made a total of 201 separate applications. The next largest are individuals who made a total of 151 separate applications to the top ten agencies.

The top ten agencies only received 17 applications from Members of Parliament and only 2 from the media. However, across all agencies, Members of Parliament accounted for 85 requests and the media for 17.

### ***What kinds of documents are being requested?***

Applicants are using the FOI Act to seek access to a variety of non-personal information including accident reports and workers compensation claims; planning documents; fire investigation reports; documents relating to land clearing, the environment and site contamination; land valuation reports; tenders and contracts; and those associated with neighbourhood disputes. Very few of these types of requests have resulted in complaints to me for external review.

### ***The operation of my office***

There has been a decrease in complaints to my office, especially in the second half of the year under review, which I largely attribute to the change of Government following the State Election in February 2001. Applicants who make repeated requests to agencies, followed by complaints to my office (serial applicants) continue to create resource problems for agencies. It is not always easy for agencies to find the right balance between allowing an applicant to exercise his or her rights under the FOI Act and the practicalities of dealing with their obsessive and futile applications for access to documents.

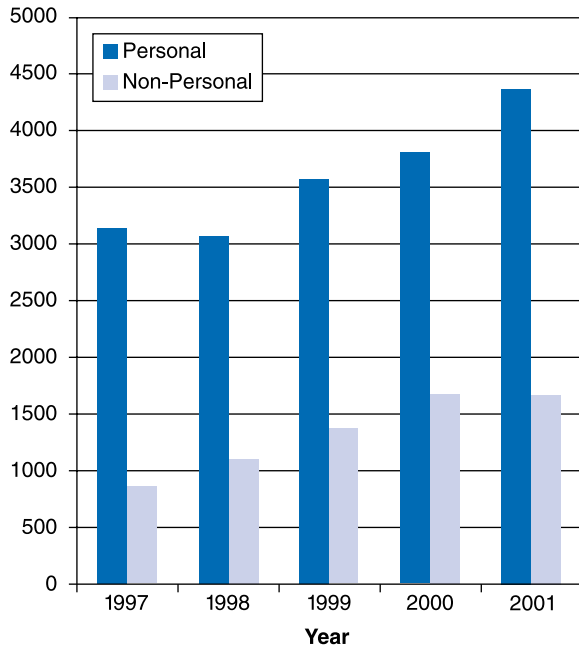
My office is faced with a budget cut for the year 2001/02 of \$76,000, rising in the following 3 years to \$98,000. If the number of complaints does not increase markedly in the next and following years, I am able to cope with this decrease through restructuring in the office and by streamlining our complaint procedures. There is no longer a need for me to finalise all complaints by publishing my reasons in full, because many of the FOI principles have been covered in previous decisions. In the future, wherever possible, I intend to finalise complaints by letters between the parties. I will publish my reasons in note form only, where a complaint involves no new principles of law or of access.

I wish to express my appreciation to the dedicated team in my office who have largely contributed to the completion of another successful year.

## ALL AGENCIES

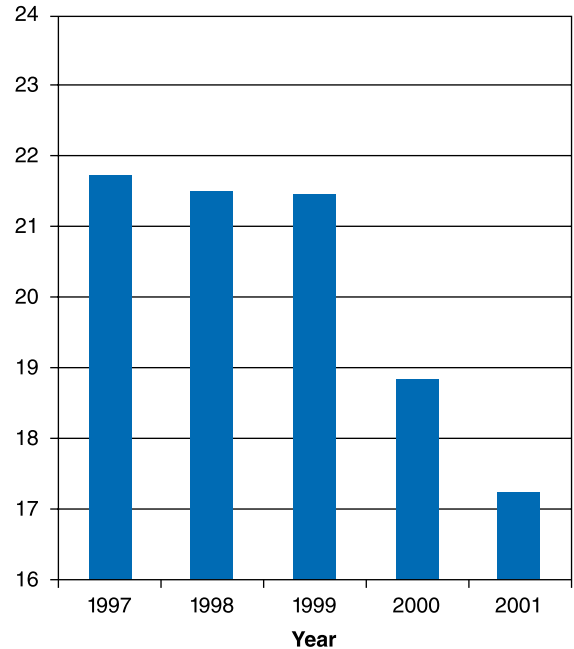
**FIGURE 1**

**Applications Decided – All Agencies**



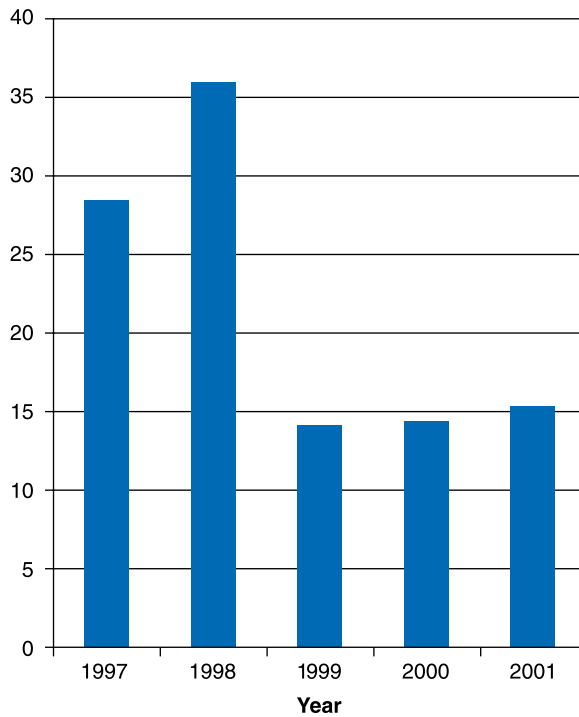
**FIGURE 2**

**Average Days – All Agencies**



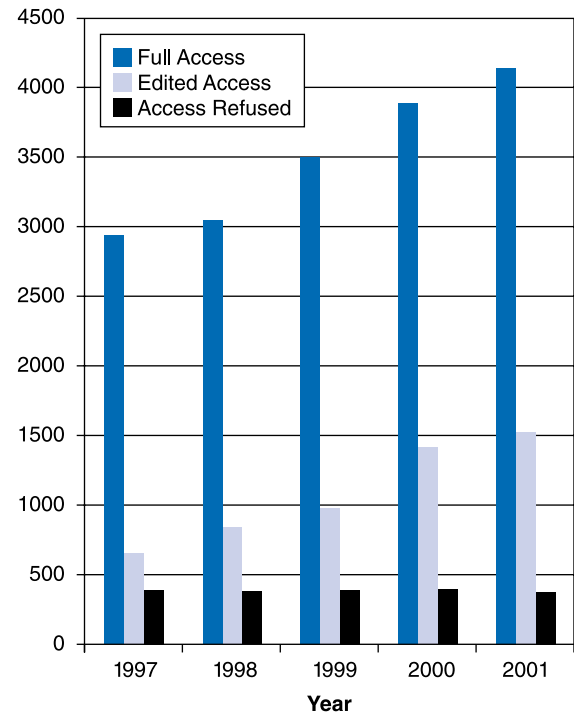
**FIGURE 3**

**Average Charges – All Agencies (\$)**

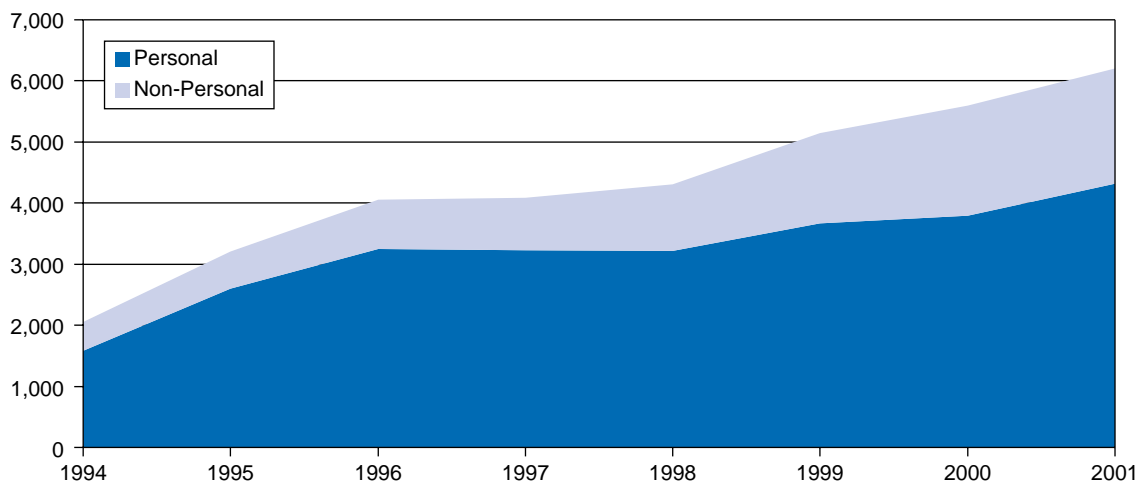


**FIGURE 4**

**Outcome of Decisions – All Agencies**

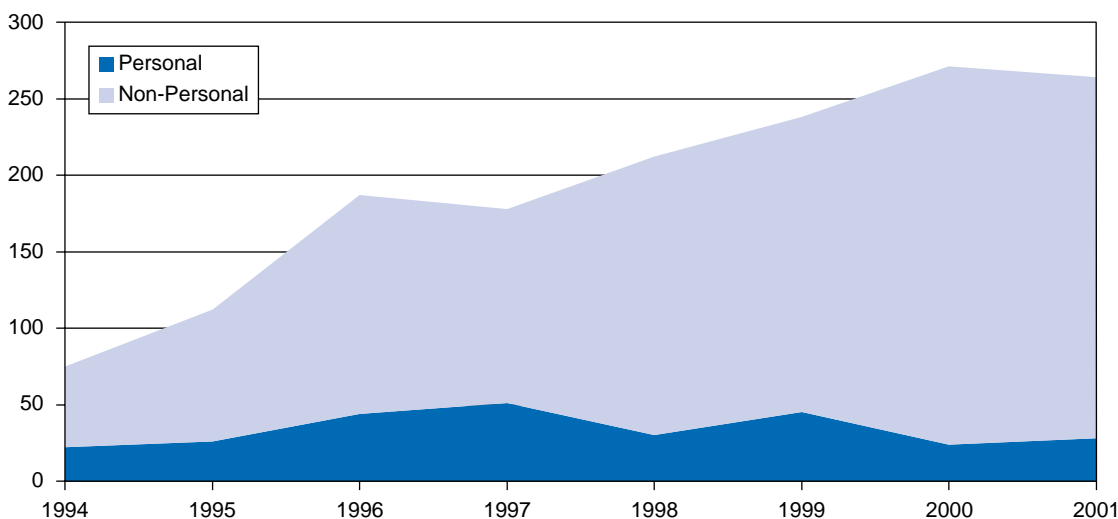


**FIGURE 5**  
**STATE GOVERNMENT AGENCIES**  
**Applications for Personal v. Non-Personal Information**  
**since inception of FOI in Western Australia**



| Year         | Personal      | Non-Personal | Total         |
|--------------|---------------|--------------|---------------|
| 1994         | 1,582         | 471          | 2,053         |
| 1995         | 2,594         | 617          | 3,211         |
| 1996         | 3,249         | 809          | 4,058         |
| 1997         | 3,225         | 862          | 4,087         |
| 1998         | 3,213         | 1,091        | 4,304         |
| 1999         | 3,672         | 1,474        | 5,146         |
| 2000         | 3,797         | 1,796        | 5,593         |
| 2001         | 4,314         | 1,888        | 6,202         |
| <b>TOTAL</b> | <b>25,646</b> | <b>9,008</b> | <b>34,654</b> |

**FIGURE 6**  
**LOCAL GOVERNMENT AGENCIES**  
**Applications for Personal v. Non-Personal Information**  
**since inception of FOI in Western Australia**



| Year         | Personal   | Non-Personal | Total        |
|--------------|------------|--------------|--------------|
| 1994         | 22         | 53           | 75           |
| 1995         | 26         | 86           | 112          |
| 1996         | 44         | 143          | 187          |
| 1997         | 51         | 127          | 178          |
| 1998         | 30         | 182          | 212          |
| 1999         | 45         | 193          | 238          |
| 2000         | 24         | 247          | 271          |
| 2001         | 28         | 236          | 264          |
| <b>TOTAL</b> | <b>270</b> | <b>1,267</b> | <b>1,537</b> |

FIGURE 7 – TOP TEN AGENCIES – NON-PERSONAL

| Agency   | Types of Documents   | Organisations | Individuals | Politicians | Media    | Total      |
|--|--|---------------|-------------|-------------|----------|------------|
| Ministry for Planning                          | Planning matters.  | 39            | 25          | 0           | 0        | 64         |
| WorkSafe Western Australia                     | Accident Reports. Workers compensation claims.   | 61            | 1           | 2           | 0        | 64         |
| Department of Minerals and Energy              | 90% are for accident reports.<br>Others regarding waste hazard fire in Bellevue.   | 11            | 44          | 0           | 0        | 55         |
| Department of Environmental Protection         | Landclearing for farming. Development of land in environmentally sensitive areas. Concerns about potentially contaminated sites/premises. Project proposals. Premises' compliance with licencing conditions. | 22            | 15          | 3           | 1        | 41         |
| Fire and Emergency Services Authority          | Fire investigation reports, causes of fire, environmental matters.   | 34            | 6           | 0           | 0        | 40         |
| Main Roads Department                          | Land valuation reports and roads.  | 16            | 9           | 1           | 0        | 26         |
| City of Swan                                   | Neighbourhood disputes. Planning issues. Contracts/tenders.  | 7             | 16          | 0           | 0        | 23         |
| Department of Contract and Management Services | Contracts/tenders.   | 0             | 12          | 8           | 1        | 21         |
| Department of Transport                        | Consultants. Tenders. Boats. Jetties. Harbour. Surveys. Vehicle details.   | 4             | 13          | 2           | 0        | 19         |
| City of Melville                               | Heathcote site redevelopment. Neighbourhood disputes. (One request was from a government agency.)  | 7             | 10          | 1           | 0        | 18         |
| <b>TOTAL</b>                                   |  | <b>201</b>    | <b>151</b>  | <b>17</b>   | <b>2</b> | <b>371</b> |

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