

# **OFFICE OF THE INFORMATION COMMISSIONER**

WESTERN AUSTRALIA

## **NINTH ANNUAL REPORT 2002**

PRESENTED TO BOTH HOUSES  
OF PARLIAMENT



GOVERNMENT OF WESTERN AUSTRALIA

DEAR MR PRESIDENT  
DEAR MR SPEAKER

In accordance with the provisions of the *Financial Administration and Audit Act 1985* and the *Freedom of Information Act 1992*, I submit my report for the year ended 30 June 2002.

This is the ninth annual report of the Office of the Information Commissioner and has been prepared in compliance with the provisions and reporting requirements of both Acts.

A handwritten signature in cursive script, reading "B. Keighley-Gerardy".

B KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER  
15<sup>th</sup> October 2002

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## FOREWORD

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## FOREWORD



*Bronwyn Keighley-Gerardy*

This is my ninth report to Parliament on the operation of the *Freedom of Information Act 1992* in Western Australia. Early difficulties associated with the “settling-in” period of the legislation have abated and the total number of requests has steadily increased each year with overall positive outcomes as shown by the figures on page 5. The fact that the legislation appears to be working successfully in this State may explain the reluctance of governments to introduce changes to make the FOI Act more effective and to further the objects of FOI. None of the legislative changes, which I have identified in my last eight reports as being desirable, has progressed beyond the preliminary discussion or consultation stage. None has been accorded any kind of priority in the legislative timetable and meaningful changes, whether to the substantive sections of the FOI Act or to the merely procedural ones, remain a distant hope of mine.

In 2001/02, there was an increase in the number of complaints to me about refusals of access. A significant number of those complaints involved applicants seeking access to personal information about other people. Agencies have consistently denied applicants access to personal information about other people, whether they be strangers, relatives, neighbours or public officials in the interests of protecting privacy.

I have found such decisions to be justified under the strict terms of the FOI Act. However, there has not been any public discussion about whether personal information that is already in the public domain or known to the applicant because of some prior association should be given the same level of protection as personal information which is not so well known. I remain hopeful that the prospect of privacy legislation to work in conjunction with FOI will provide an opportunity for these matters to be considered further.

The giving of proper reasons for a decision is an important part of administrative law and FOI. When inadequate or insufficient reasons are given by an agency and it is not apparent to me on the face of the documents that they are or should be exempt, I have adopted the approach of requiring the agency concerned to provide written reasons within one week. This is consistent with s.102(1) of the FOI Act, which places the burden of proof on an agency. I do not consider that the determination of an applicant’s rights should be delayed by an agency seeking legal advice “at the eleventh hour” as some have tried to do.

In the course of dealing with complaints, I have closely scrutinised the notices of decisions given to applicants, which contain reasons for refusal. There is no doubt that some agencies provide clear and concise reasons. For example, over the years there has been an improvement in the reasons given by the Police Force of Western Australia. The FOI procedures and decisions of the Department of Indigenous Affairs, the Department of Justice and the City of Perth are examples of agencies that consistently comply with legislative requirements. In contrast, inadequate reasons and poor notices of decision have been given by smaller agencies who receive few requests. After nine years, I consider any failure of this kind to be a breach of duty. I will bring future occurrences to the attention of relevant chief executive officers and, as appropriate, the relevant Minister, and then report in my Annual Report.

There have also been some complaints made to me about a lack of assistance from agencies. However, my investigations have not substantiated those complaints nor have they discovered any “deliberate” attempts by the agencies concerned to frustrate applicants seeking to use the FOI Act. Rather, my investigations indicate either a misunderstanding about the kinds of documents requested, or applicants with unreasonable expectations about what the FOI Act can actually deliver to them in terms of access to documents.

In order to use FOI successfully, an applicant must be able to describe or identify the particular document to which he or she seeks access. If an applicant does not know or understand how government agencies keep and maintain records, he or she is likely to make an ill-defined and very broad request. The obvious starting point for an applicant is the relevant agency’s Information Statement and internal manuals, which must be made available for inspection or purchase by members of the public. Officers of agencies also have a duty to assist an applicant to make a proper application that complies with the FOI Act. That means that officers dealing with access applications should be able to describe their own agency’s record holdings with enough particularity to enable an applicant to say “Yes, that’s the document I want.”

A recent development in public sector management, which should improve FOI in the long term, is the requirement in the *State Records Act 2000* for agencies to prepare Recordkeeping Plans. Both the FOI Act and the State Records Act require a more disciplined and structured approach to the keeping of government records. As a State Records Commissioner, I consider that there is scope for some rationalization of these legislative requirements to minimise compliance costs for agencies. The process of preparing a Recordkeeping Plan is an ideal opportunity for agencies to think strategically about record management issues. For example, most records must be classified in some way for the purpose of a Retention and Disposal Schedule as part of an agency’s Recordkeeping Plan. When records are being classified for that purpose, they could also be classified for FOI purposes as being personal or non-personal records and either routine or sensitive with restricted access. If this approach were to be adopted by agencies then, over time, both access procedures and the administration of FOI would benefit.

Another way of ensuring that the public has access to the information it needs to effectively use FOI is for agencies to publish Information Statements, internal manuals and, in time, approved Recordkeeping Plans on the Internet. This year, I conducted a preliminary examination of the web sites of 23 State Government agencies and 5 local authorities and assessed the level of information about records, record-keeping, FOI, and the internal policies and practices of agencies available to the public through the Internet. The results are summarised as follows:

	State Government	Local Government
<i>Number with Information Statements on the Internet</i>	11	1
<i>Number with at least some information about FOI on the Internet</i>	13	1
<i>Number with some internal manuals published on the Internet</i>	23	5

Some websites were more informative and “user friendly” than others, and the best of those examined from an FOI point of view are considered to be:

- Police ([www.police.wa.gov.au](http://www.police.wa.gov.au))
- Justice ([www.justice.wa.gov.au](http://www.justice.wa.gov.au))
- Health ([www.health.wa.gov.au](http://www.health.wa.gov.au))
- City of Joondalup ([www.joondalup.wa.gov.au](http://www.joondalup.wa.gov.au))
- Mineral and Resources Development ([www.dme.wa.gov.au](http://www.dme.wa.gov.au))

Although an agency may not have information about FOI online, it may have FOI practices and procedures in place, which inform people about their rights under the legislation and which assist people to access documents. It is difficult to know whether the documents available online represent all of the internal manuals required to be published under Part 5 of the FOI Act and agencies may have other arrangements in place which facilitate inspection of Information Statements and internal manuals, rather than publishing these on the Internet. Some enhancements have been made to the web-sites of the agencies since the preliminary survey and I intend to monitor the use made of this medium as more information is made available to the public online.

Finally, to ensure agencies are aware of their responsibilities under the FOI Act, more detailed reviews of the FOI practices in selected agencies are planned for the coming year.

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

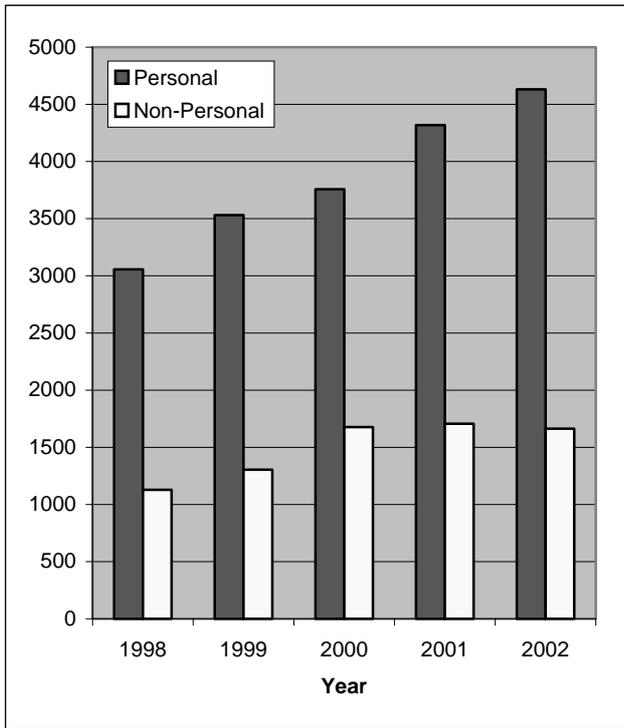
I have continued to pursue measures within my office to maximise efficiency and the achievement of outcomes in a timely manner. Electronic communications with agencies has been adopted wherever possible for general correspondence, both with respect to advice as well as dealings with agencies during external review, subject to agreement with those agencies beforehand.

Benefits in timeliness have been realised, as reflected in a reduction in time taken to finalise matters before me for external review which, together with a streamlining of procedures and the implementation of a restructure referred to last year, has reduced costs.

Further detail on the provision of information to the public and agencies, via our website, and use of electronic communications is provided in this annual report. I wish to express my appreciation to the dedicated team in my office who have all contributed to the completion of another successful year.

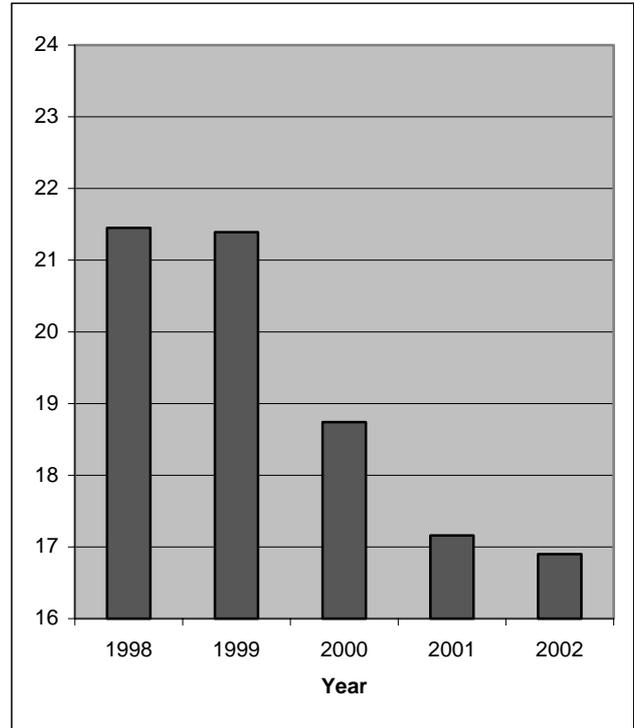
**FIGURE 1**

**Number of Applications Decided—All Agencies**



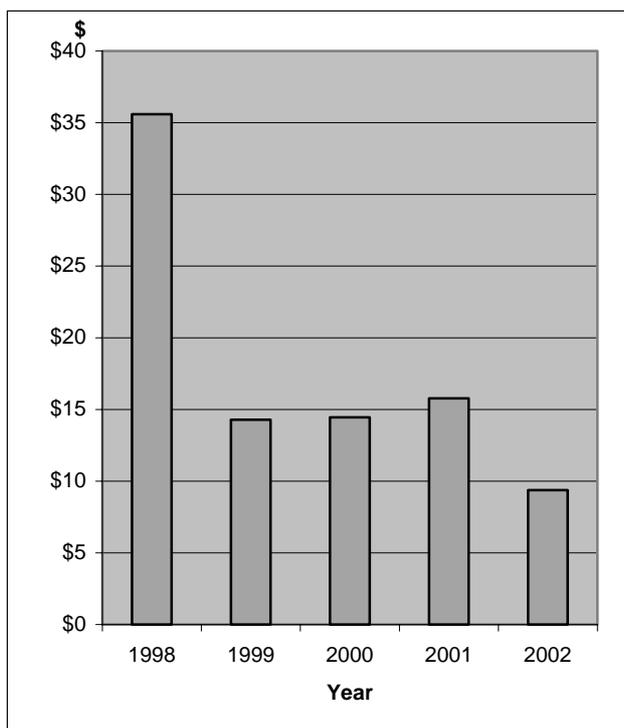
**FIGURE 2**

**Average Days Taken to Deal with Applications – All Agencies**



**FIGURE 3**

**Average Charges Imposed —All Agencies (\$)**



**FIGURE 4**

**Outcome of Decisions—All Agencies**

