

# **OFFICE OF THE INFORMATION COMMISSIONER**

WESTERN AUSTRALIA

## **ELEVENTH ANNUAL REPORT 2004**

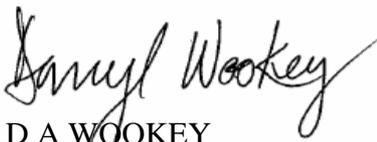
PRESENTED TO BOTH HOUSES  
OF PARLIAMENT



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 2004 which has been prepared in compliance with the provisions and reporting requirements of both Acts.

A handwritten signature in black ink, reading "Daryl Wookey". The signature is written in a cursive style with a large, sweeping initial 'D'.

D A WOOKEY  
A/INFORMATION COMMISSIONER  
1<sup>st</sup> November 2004

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# FOREWORD

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## FOREWORD



*Darryl Wookey*

This is the 11<sup>th</sup> annual report to Parliament on the operation of the *Freedom of Information Act 1992* in Western Australia, and my first as Acting Information Commissioner.

I was appointed A/Information Commissioner on 3 November 2003, following the announcement by the Attorney General of proposed changes to the form and jurisdiction of the office and the retirement of the former Information Commissioner, Ms Bronwyn Keighley-Gerardy.

I take this opportunity to acknowledge the work of Ms Keighley-Gerardy as Information Commissioner for the first 10 years of the operation of freedom of information in this State. In that role, Ms Keighley-Gerardy, with whom I previously worked for seven and half years as Principal Solicitor in the office, was a passionate advocate for freedom of information. Her vision and energy - together with the tireless and capable support and assistance of her staff, many of whom are still with the office - in establishing the office and the jurisdiction in Western Australia has resulted in an office which is widely recognised, both nationally and internationally, as an office of "best practice" in the field.

I also take this opportunity to acknowledge the staff of the office, both past and present, and the significant contributions they have made to the creation and continuation of an effective, efficient and accessible external review mechanism and advisory service in this State. In particular, I thank the present staff for their continued support and professionalism in what has been an unsettling year for them. It is a tribute to them that in the last year the office has continued to operate to the same high standard that it has for the previous 10 years.

The Government's proposed changes to the form and jurisdiction of the office have not yet been put to the Parliament. The main features of the proposed change have been made public and include the amalgamation of the Information Commissioner's position with that of the Ombudsman. However, the details of the changes and the timeframe for them to occur are not yet clear. I hope, in the meantime, to have some input into the process to ensure that any changes finally proposed will preserve the key features of the present Information Commissioner model: an effective, efficient, inexpensive and accessible independent external review mechanism; an opportunity for the resolution of complaints by conciliation; an effective advice and awareness service; and a means for monitoring the operation of the FOI Act across the public sector. I am optimistic that this goal is not inconsistent with the aims of the Government's proposed changes and look forward to further discussions on the matter.

In the meantime, the office continues to exercise the functions of the Information Commissioner as set out in the *Freedom of Information Act 1992* and this report details our performance in the year ending 30 June 2004, as well as providing the information required by Parliament under s.111 of the legislation.

### **Collocation**

In June 2004, my office relocated to offices in St Martin's Tower previously occupied by the Office of the Ombudsman. We are now collocated with the Office of the Ombudsman, the Office of the Commonwealth Ombudsman, the Office of Health Review and the Office of the Commissioner for Public Sector Standards. The Offices of the Ombudsman, the Commonwealth Ombudsman and Health Review have been collocated for a number of years, with the Commissioner for Public Sector Standards moving into the premises more recently. We occupy our own suite of offices but share a common reception area, conference rooms, meeting rooms and amenities rooms. Otherwise, we continue to operate as a separate statutory office, as required by the FOI Act.

The move has resulted in savings to the public purse in rent and outgoings (particularly as the Office of the Ombudsman and the Office of the Information Commissioner now together occupy a floor previously occupied solely by the Office of the Ombudsman). It has also provided us with a room in which to conduct some of our training courses, rather than having to hire a room.

As well as resulting in ongoing financial savings in respect of accommodation, collocation presents the opportunity for cooperation between the collocated offices to undertake shared initiatives in such activities as outreach; training for staff; and facilities and services for staff.

We have already agreed on participation in one joint outreach activity with the Ombudsman, the Commonwealth Ombudsman and the Office of Health Review, being a shared display stand at the “WA on Show” exhibition at the new Perth Convention Centre, and other joint outreach activities are proposed for the future. Similarly, shared in-house information and education sessions on matters of common interest are proposed, and a Guest Speaker Series has been initiated to inform staff of all the collocated agencies of the role, functions and jurisdiction of various other “accountability agencies” and dispute-resolution bodies in the public sector. As at 30 June 2004, the Equal Opportunity Commissioner and the Public Service Arbitrator have kindly given their time as guest speakers, with the Auditor General and a Member of the Small Claims Tribunal scheduled to do so in July and August.

Collocation also affords parties to complaints – both complainants and agencies – who may be involved in complaints with more than one of the collocated agencies the convenience of one location to attend, as it does for those seeking advice as to the course of action they should take in respect of a particular complaint.

### **Visit from the UK**

The former Information Commissioner was visited for two days by the United Kingdom’s Deputy Information Commissioner, Mr Graham Smith, in September 2003. He was given detailed briefings and advice on the workings of our office and the implementation and operation of the Information Commissioner model in Western Australia. Mr Smith sought this information to plan for the commencement of FOI legislation in the UK and saw the achievements in Western Australia as a model to follow because of the effectiveness and efficiency of the office, and successful outcomes recorded both by the office and by the public sector.

### **Visit to South Africa**

At the invitation of the Open Democracy Advice Centre (ODAC) I travelled to South Africa for five days in May 2004. At the request of the South African Human Rights Commissioner, ODAC had conducted a comparative study of FOI external review models around the world, with a view to putting a proposal to the South African Government. Under the South African *Promotion of Access to Information Act 2000* the only available avenue for external review is by way of appeal to the High Court (the equivalent to our Supreme Court), a relatively inaccessible mechanism. ODAC identified the Western Australian Information Commissioner model as the preferred model for efficient, effective, inexpensive, timely and accessible external review of FOI decisions by agencies and was granted funding by AusAid for a visit from the Western Australian Information Commissioner.

During the five days I spent in South Africa, I met with ODAC; separately with two Members of Parliament, including the Chair of Parliamentary Justice Portfolio Committee; the South African History Archives; the South African Human Rights Commissioner; and the Public Protector. I briefed each on the operation and effectiveness of the Western Australian model and the practical and financial implications of implementing such a model. As a result of my visit, it was indicated that a visit to Western Australia by the appropriate officials to witness the operation of FOI here is likely to be proposed in the forthcoming year.

### **Consultation by Scottish Information Commissioner**

During the year I participated in a telephone interview with the office of the Information Commissioner for Scotland and provided information about the investigative and other processes of the office. The interview was one of a series the Scottish Information Commissioner conducted with a range of Information Commissioners around the world in preparation for the commencement of the operation of the *Freedom of Information (Scotland) Act 2002*, on 1 January 2005.

### **Complaints dealt with by my office**

After the first decade of operation of the legislation and the office, I consider it timely to review the measures by which we assess our performance and the recording and reporting of our work. I propose to do that in the forthcoming year. For consistency with previous reporting, this year I have reported on complaints received and dealt with by my office, classified as they have been in recent years. In the future I would propose to review the classification of some matters and report in more detail as to the nature of the matters received and dealt with.

For example, included in the numbers of invalid/informal complaints are a number of matters which in my view are more appropriately classified and reported on as advice matters, as they are not complaints or applications for external review. For instance, in the year under review 53 of the matters recorded as invalid/informal complaints were misdirected access applications. In my view, the time and effort expended by my staff in dealing with those matters and providing advice to the correspondent is an important advice activity which should be separately identified and reported on. Doing so will also allow the identification of any patterns and follow up with agencies in respect of any problems they reveal.

If the 53 misdirected access applications are excluded from the number of complaints received, the number of complaints to my office was 150, which means that only 1.75% of decisions made by agencies in that period resulted in a complaint to my office. Those 150 matters consisted of 127 valid complaints and 23 that I would classify informal/invalid complaints (ie where the complainant has endeavoured to complain about the agency's handling of his or her application, but the complaint does not meet the formal requirements of the Act or the requisite procedures that precondition the making of a complaint - eg applying for internal review - have not been followed).

Similarly, of the 173 matters recorded as complaints which were finalised during the year, 98 were formal complaints. Of the other 75 matters recorded as complaints finalised, again, 53 were misdirected access applications.

### **Applications dealt with by agencies**

The primary responsibility for making decisions on FOI applications and otherwise giving effect to the provisions of the FOI Act rests with agencies. As can be seen from a review of previous annual reports of the Information Commissioner, the number of applications made to agencies under the FOI Act has steadily increased, from 3323 at the end of the first full financial year of operation of the FOI Act (1995) to 7823 in the year under review.

From the statistical tables at the end of this report, it can be seen that, as in previous years, the Police Force of Western Australia received the highest number of applications made to a single agency (1209), with the next highest being received by Royal Perth Hospital (1049) and Sir Charles Gairdner Hospital, North Metropolitan Health Service (809) respectively, and another 2641 received in total by various other health services. The very low amount of application fees and charges collected by the health services (for example, a total of \$330 in application fees and no additional charges collected by Royal Perth Hospital and Sir Charles Gairdner Hospital, North Metropolitan Health Service) suggests that the vast majority of access applications to those agencies are for personal information - for example, medical records - about the access applicant, for which no application fee or other charge is payable.

The statistical tables also reveal that, of the 7311 decisions made by the agencies in respect of access applications, 67.8% resulted in the access applicant being given access in full to the documents sought; 25.4% resulted in the access applicant being given access to edited copies of the documents sought; and 0.4% of the decisions made resulted in either access being given but deferred, or access being given in accordance with s.28 of the Act (by way of an approved medical practitioner). Those figures indicate that 93.6% of the 7311 decisions made by agencies in FOI applications were to the effect that access in some form was given. Only 6.4% of the decisions made were refusals of access.

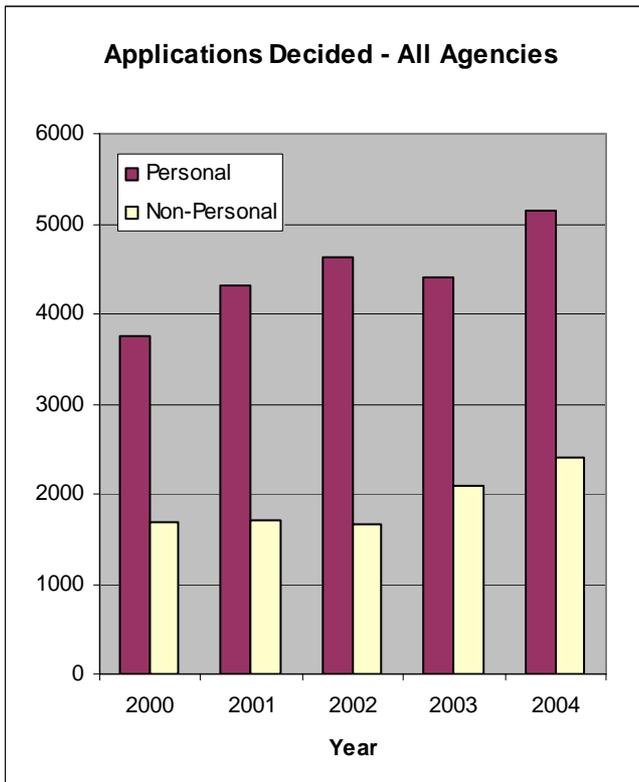
Consistent with previous years, the exemption clause most frequently claimed by agencies was clause 3, which exempts from disclosure personal information about individuals other than the access applicant. That clause was claimed 1588 times in the year under review. The next most frequently claimed exemptions were clause 5, which relates to law enforcement, public safety and property security (200 times) and clause 7, which protects from disclosure documents which would be privileged from production in legal proceedings on the ground of legal professional privilege (108 times).

Figures 1-4 below illustrate the performance of agencies in respect of FOI in the year under review. The number of applications decided by agencies increased, as did the number of occasions on which full access was given. The average time taken to deal with access applications increased by approximately 2.5 days from the previous year, but is still well within the maximum period of 45 days permitted by the Act. It does not appear to be a significant increase, given the increase in the numbers of access applications being dealt with, but my office will continue to monitor it. The average amount of charges imposed by agencies for dealing with access applications decreased in comparison with the previous year. Although the conclusions that can be drawn from statistics such as these are limited, in my view these figures are a positive indicator that, overall, agencies are giving effect to the Act in the manner in which it was intended to operate.

Of course there continue to be instances where that is not the case, and it is the ongoing goal of my office, both through the external review of complaints and through our advisory and educational activities, to ensure that these positive trends continue and that problem areas are identified and addressed.

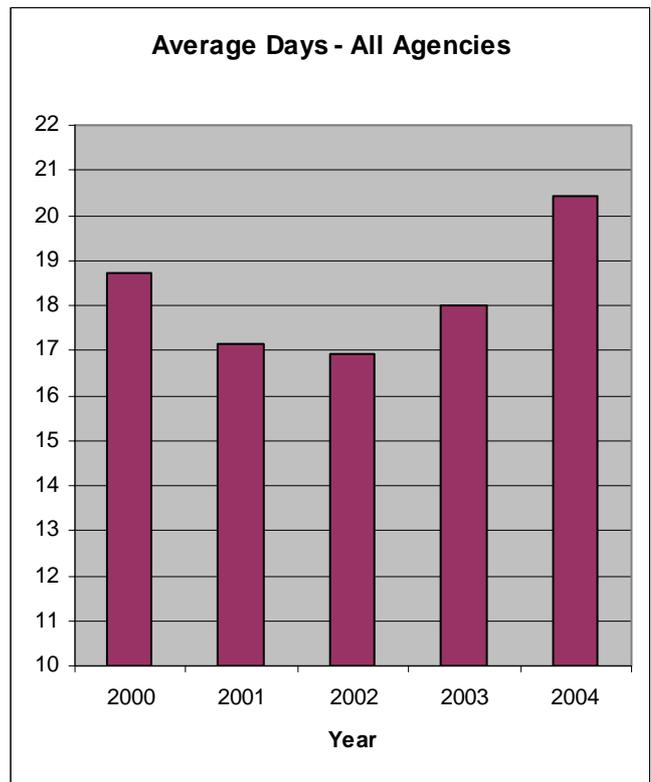
**FIGURE 1**

**Number of Applications Decided—All Agencies**



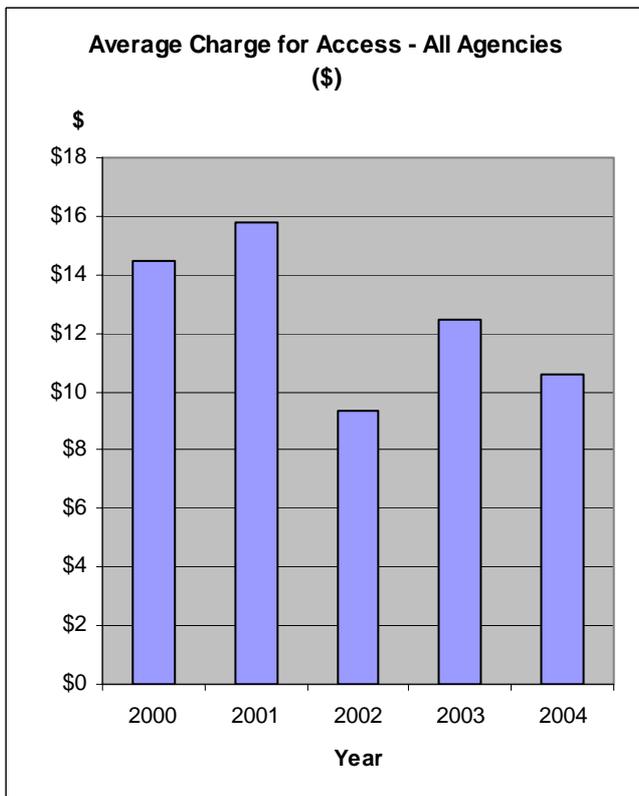
**FIGURE 2**

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



**FIGURE 3**

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



**FIGURE 4**

**Outcome of Decisions—All Agencies**

