

AGENCIES OVERVIEW

OVERVIEW OF APPLICATIONS DEALT WITH BY AGENCIES

Section 111 of the FOI Act requires that the Information Commissioner’s annual report to the Parliament include certain specified information relating to the number and nature of applications under the FOI Act dealt with by agencies during the year. To enable that to occur, agencies are also required by s.111 to provide the Information Commissioner with the specified information. That information for 2006/07 is set out in detail in the statistical tables at the end of this report. The following is an overview.

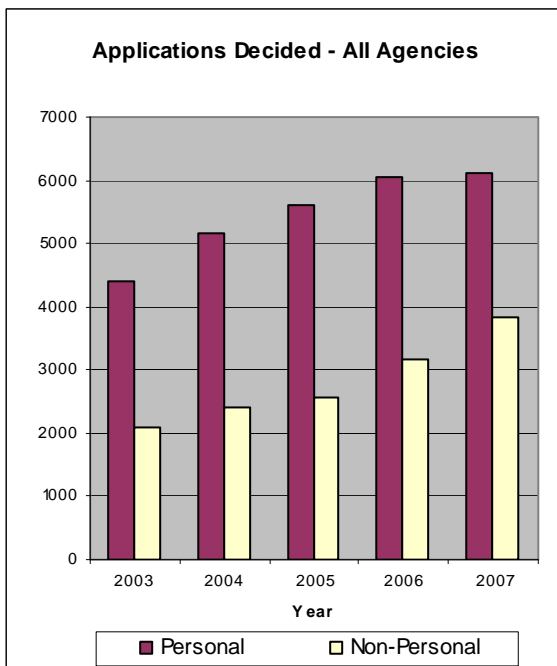
The primary responsibility for making decisions on FOI applications and otherwise giving effect to the provisions of the FOI Act rests with agencies. Applications under the FOI Act are made in the first instance to the government agency holding or likely to hold the document sought, and the agency must deal with and decide the application. As can be seen from a review of previous annual reports of the Information Commissioner, the number of access 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 (1994/95) to 10416 in the year under review. That represents an increase of approximately 213% in 12 years from 1995

and 8.6% from last year (9591).

From the statistical tables at the end of this report, it can be seen that, as in recent previous years, the Police Force of Western Australia received the highest number of applications made to a single agency (1771 - an increase of 14.8% from last year), with the next highest being received by Royal Perth Hospital (1187 - an increase of about 5.9% from last year) and Sir Charles Gairdner Hospital (887 - a decrease of about 11.7%) respectively, and another 3283 in total received by various other health service providers (hospitals, health services and the Department of Health).

The very low amount of application fees and charges collected by the health services (for example, a total of \$90.00 in applications fees - i.e. three application fees - and \$0 in additional charges collected by Royal Perth Hospital) suggests that the vast majority of access applications to that agency was, as in previous years, for personal information - for example, medical records - about the access applicant, for which no application fee or other charge is payable.

FIGURE 1
Number of Applications Decided—All Agencies



Of the 10416 applications received by agencies in 2006/07, 432 (just over 4%) were received by local government agencies and 9984 (96%) by State Government agencies. Of the local government agencies, the City of Joondalup received the highest number of applications (30), followed by the City of Mandurah (29) and the City of Stirling and City of Melville (each with 25), the City of Wanneroo (23) and the City of Fremantle (21). A number of the small country local Government agencies reported having received none or one.

Of the applications made to State Government agencies, 86 were made to Ministers, similar to the number made to Ministers last year. The Minister receiving the highest number of applications was the Hon J A McGinty, Attorney General; Minister for Health; Electoral Affairs (16), with the next highest being the Hon A MacTiernan, Minister for Planning and

Infrastructure (13). Hon J C Kobelke, the Minister for Police and Emergency Services; Community Safety; Water Resources; Sport and Recreation and Hon S M McHale, Minister for Disability Services; Tourism; Culture and the Arts; Consumer Protection received 8 and 7 applications respectively. Of the decisions on access made by Ministers in the reporting period, 15 (25%) were to give full access; 27 (45%) were to give access to edited copies of documents; and 17 (28%) were to refuse access. The exemptions claimed by Ministers were 6 x clause 1 (Cabinet and Executive Council documents); 31 x clause 3 (personal information); 6 x clause 4 (commercial or business information of private persons); 3 x clause 4A (information provided to Treasurer under section 22 of *Bank of Western Australia Act 1995*); 10 x clause 6 (deliberative processes of government); 6 x clause 7 (legal professional privilege); and 2 x clause 8 (confidential communications).

The statistical tables also reveal that 9470 decisions on access applications were made by agencies under the FOI Act in 2006/07. Of those decisions made, 57.3% resulted in the applicant being given access in full to the documents sought; 31.5% resulted in the applicant being

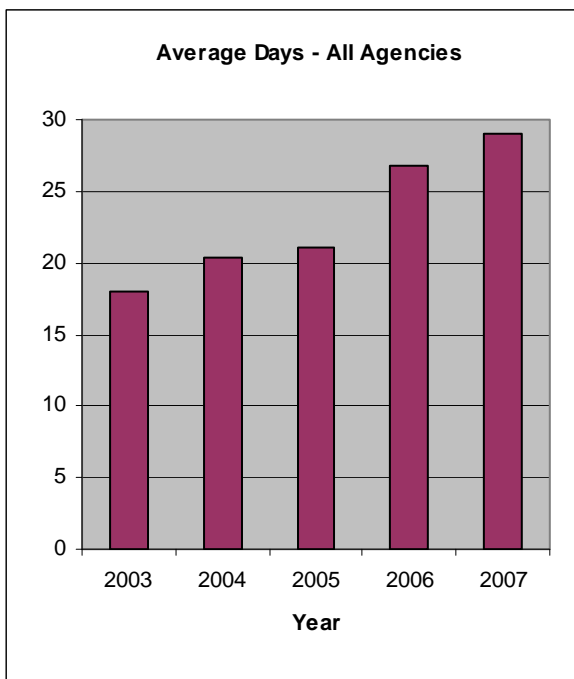
given access to edited copies of the documents sought; and just over 0.4% resulted in either access being given but deferred, or being given in accordance with s.28 of the FOI Act (by way of an approved medical practitioner). Those figures indicate that approximately 89.2% of the 9470 decisions made by agencies on FOI applications were to the effect that access in some form was given. Only 10.9% of the decisions made were to refuse access. That is consistent with the similar statistics for the previous year.

Also 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 applicant. That clause was claimed 2827 times in the year under review. The next most frequently claimed exemptions were: clause 4, which relates to certain commercial or business information of private individuals and organisations (119 times); clause 7, which protects from disclosure documents which would be privileged from production in legal proceedings on the ground of legal professional privilege (101 times); and clause 6, which relates to the deliberative processes of government (also 101 times). The 2004 amendment to clause 5, which relates to law enforcement, public safety and property security, resulted in a significant decrease in the use of this exemption from 170 in 2005 to 90 in 2006 and a further decrease to 70 in this period. Prior to the amendment, clause 5(1)(b) exempted from disclosure documents that would reveal the investigation of a contravention or possible contravention of the law in a particular case. The amendment was to delete the words “reveal the” and replace them with “prejudice an”. The effect of that is that, to establish the exemption, an agency must now be able to show that disclosure could reasonably be expected to cause some harm to an investigation.

Agencies received 162 applications for internal review of decisions relating to access applications during 2006/07. This represents about 2% of all decisions made and about 16% of decisions made to refuse access. In the year under review 159 applications for internal review were dealt with. The decision under review was confirmed on 112 occasions, varied on 33 occasions, reversed on

FIGURE 2

Average Days Taken to Deal with Applications – All Agencies

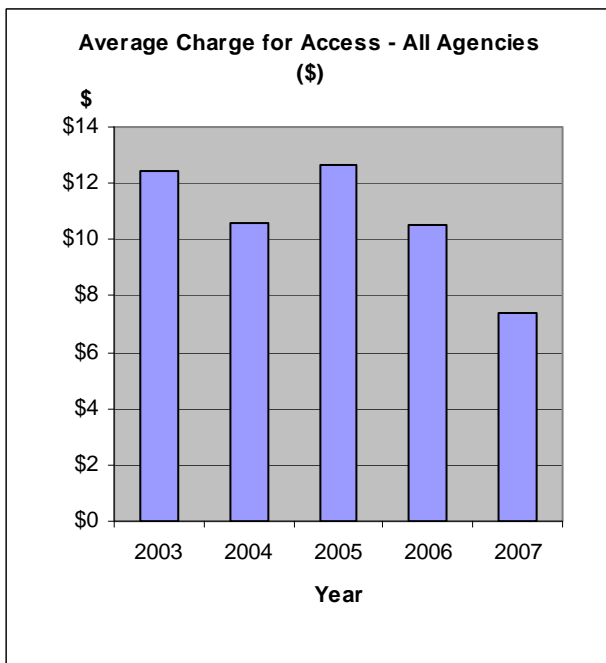


nine occasions and the application for internal review was withdrawn on five occasions. Ten applications for amendment of personal information were made to agencies during the year. Nine such applications were dealt with, resulting in personal information being amended on one occasion, not amended on five occasions and amended, but not as requested, on two occasions; and one application was withdrawn. The three reported applications for internal review of decisions relating to the amendment of personal information resulted in the initial decision being confirmed on each occasion.

The number of applications decided by agencies increased, as did the number of occasions on which full access was given. As it did last year, the average time taken by agencies to deal with access applications (approx. 29 days) increased by approximately two days from the previous year, but is still well within the maximum period of 45 days permitted by the FOI Act. It does not appear to be a significant increase, given the increase in the number of access applications being dealt with. The average amount of charges imposed by agencies for dealing with access applications again decreased in comparison with the previous year.

FIGURE 3

Average Charges Imposed —All Agencies (\$)



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 FOI Act in the manner in which it was intended to operate. Of course, there continue to be particular 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 these positive trends continue and that problem areas are identified and addressed.

FIGURE 4

Outcome of Decisions—All Agencies

