

REPORT ON OPERATIONS

LEGISLATION

The office of Information Commissioner is established by s.55(1) of the FOI Act and the occupant is directly accountable to Parliament for the performance of the functions prescribed by the FOI Act. The office is independent of executive government and reports directly to the Parliament and not to, or through, a Government Minister. The Acting Information Commissioner is appointed under s.59(1) by the Governor and is empowered to exercise all the functions of the Information Commissioner. The Attorney General is the Minister responsible for the legislation in the Parliament, but has no role under the legislation.

The main function of the office is to provide independent external review of agencies' decisions by dealing with complaints about decisions made by agencies under the FOI Act. Other responsibilities prescribed by the FOI Act include:

- (i) ensuring that agencies are aware of their responsibilities under the FOI Act [s.63(2)(d)];
- (ii) ensuring members of the public are aware of the FOI Act and their rights under it [s.63(2)(e)];
- (iii) providing assistance to members of the public and agencies on matters relevant to the FOI Act [s.63(2)(f)]; and
- (iv) 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 Mission Statement and desired outcome reflect the functions and the broad ideals of openness, accountability and responsibility behind the FOI legislation.

MISSION STATEMENT

MISSION

Public understanding and confidence in the decision-making process of government agencies through access to relevant information

DESIRED OUTCOME

The primary desired outcome is access to documents and observance of processes in accordance with the FOI Act.

The Office of the Information Commissioner provides 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. The Information Commissioner has a statutory duty to undertake these functions and the office 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 office.

- 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.

RELEVANT LEGISLATION

Freedom of Information Act 1992

Freedom of Information Regulations 1993

CONTACT DETAILS

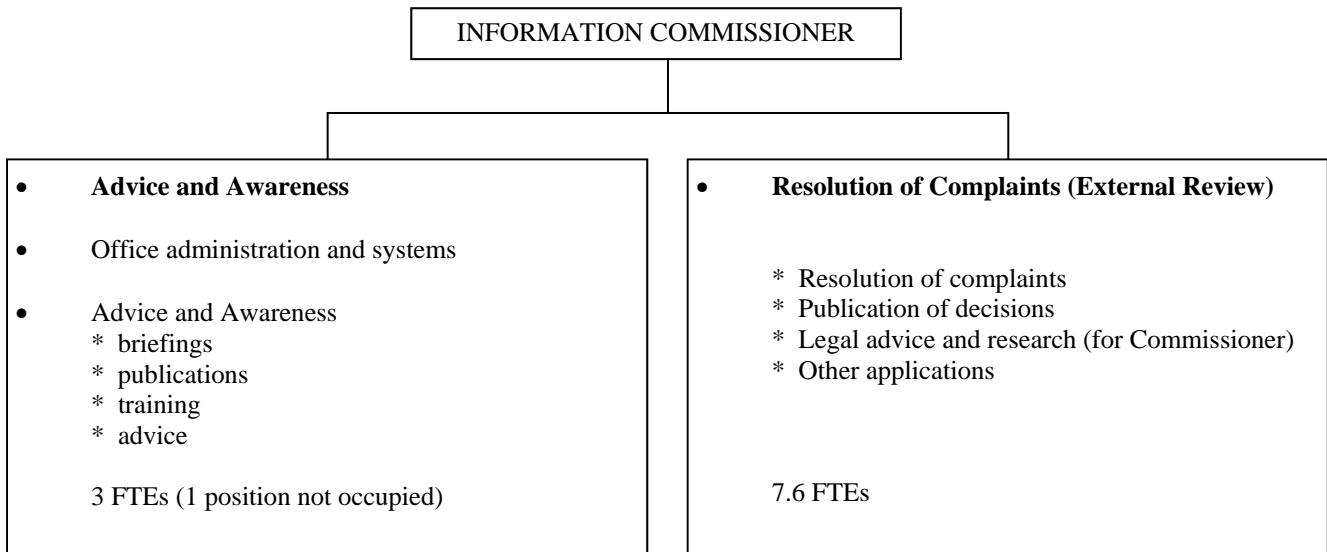
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OFFICE STRUCTURE



STAFF

Staff are appointed to assist me and new appointees must take an oath or affirmation, administered by me, prior to commencing their duties. The office structure is based on two separate teams, *Advice and Awareness* and *Resolution of Complaints (External Review)*, which ensures that the independence and integrity of the external review process is maintained.



Back row L to R: Tim Kennedy, Senior Legal Officer; Rachel Crute, Legal Officer (Research and Investigations); Tony Pruyn, Senior Investigations Officer; Kim Bracknell, Information Services Manager; Anne Marshall, Legal Officer; Sylvie de Laroche, Personal Assistant.

Front row L to R: Michelle Painter, Administrative Assistant; Vivien Hillyard, Investigations Officer; Darryl Wookey, A/Information Commissioner; Grace Grandia, Advisory/Projects Officer.

EXTERNAL REVIEW

The *Resolution of Complaints (External Review)* team deals with complaints lodged by access applicants, applicants for amendment of personal information and third parties seeking external review of decisions made by agencies under the FOI Act. The external review team also deals with applications made under ss.13(4) (reduction of time), 13(5) (extension of time), 35(1) (waiver of requirement to consult), 66(4) (lodge a complaint out of time) and 66(6) (lodge a complaint without internal review) of the FOI Act.

The process under the FOI Act is that a written application must be made to the agency holding - or likely to hold - the documents sought. The agency must deal with the application in accordance with the FOI Act and give the applicant (and in some cases third parties) written notice of its decision - and if access is refused, reasons - within a maximum of 45 days. If the applicant or a defined third party is dissatisfied with the agency's decision, one or more of those parties may apply to the agency for internal review of the decision. An officer of the agency who is not subordinate to the original decision-maker must deal with the review application and give the person seeking review written notice of its decision and reasons, if necessary, within a maximum of 15 days.

Generally it is only after having gone through that process that a complainant or third party who remains dissatisfied with the agency's decision can make a complaint to the Information Commissioner. The role of the Information Commissioner is to conduct a full merits review of the agency's decision. Following that review the Information Commissioner can decide to confirm, vary or set aside the agency's decision and substitute it with the Information Commissioner's decision. The Information Commissioner's decision is binding on the parties, subject only to a right of appeal to the Supreme Court on a question of law.

The emphasis in the external review process, however, is on informal resolution processes such as conciliation and negotiation where appropriate and, where conciliation cannot be achieved, the determinative function, which involves more formal processes, is undertaken. The external review process is intended to be speedy, accessible and informal where possible and practicable. It is the policy of the Information Commissioner to avoid, where possible, too technical an approach to external review, whilst recognizing that it is necessary and desirable for the external review process to conform to the statutory requirements of the FOI Act, the principles of administrative law and accepted professional standards of practice in merit review.

Every member of the external review team has been given broad delegated authority by the Information Commissioner, to enable external review team members to manage and deal with complaints assigned to them, having regard to the nature of each complaint, the issues in dispute between the parties and an initial assessment as to whether there are real prospects that a particular complaint may be resolved through negotiation and conciliation.

That delegation enables external review team members to determine the procedure to be followed in dealing with each complaint, with a view to achieving a conciliated outcome. The procedures followed by members of the external review team during the negotiation and conciliation process are necessarily flexible. For example, in most complaints, conciliation will be pursued through face to face meetings and discussions, usually with officers of the relevant agency in the first instance and then with the complainant. In other complaints - for example, where one or more of the parties resides at a significant distance from the metropolitan area - the procedure adopted will include telephone discussions and correspondence with the parties as well as inviting the parties to provide written submissions, outlining their respective positions on a complaint. Where it is considered appropriate, external review officers have travelled outside the metropolitan area to meet and discuss the issues in dispute with complainants. Submissions are usually exchanged between the parties, in order to clearly clarify and narrow the issues in dispute between the parties and to give each an opportunity to respond to the other's case.

The measures by which we assess our performance and record and report on our work were reviewed in 2005 to more accurately reflect the nature of the matters dealt with. The way in which the applications received by the office are classified and the method by which we calculate some of our performance indicators are explained in more detail in the “Performance Indicators” section of this report.

In the past, a number of applications were included in the figures for “complaints” received and dealt with. However, those applications were more properly classified requests for advice or were misdirected access applications. Requests for advice and misdirected access applications are now separately identified and are no longer included in the numbers of complaints received and dealt with. They are reported on as part of the *Advice and Awareness* service.

The total number of complaints (including the informal/invalid complaints) lodged with my office in the reporting period against decisions of agencies was 113. That means that only 1.20% of all access applications and applications for amendment dealt with by agencies under the FOI Act (9351) in the reporting period resulted in complaints being lodged with my office.

In my 2004/2005 annual report, I noted that an unusual feature of the 2004/2005 reporting period was that almost one quarter of the total number of valid complaints made to my office in that reporting period were lodged by seven complainants and that, in most of those cases, the second or third complaints received by my office were in relation to successive access applications made to the same agency by the same complainant. A similar pattern was evident in the 2005/2006 reporting period. In this reporting period, twenty three valid complaints, almost twenty four percent of all of the valid complaints to my office were lodged by five complainants and, in most cases, the second or third complaints received by my office were in relation to successive access applications made to the same agency by the same complainant.

EXTERNAL REVIEW APPLICATIONS AND OTHER APPLICATIONS

A total of 145 applications, composed of 113 complaints (including 17 informal/invalid complaints) and 32 other kinds of applications under the FOI Act were received in 2006/2007. Table 1 shows the kinds of applications received.

TABLE 1: APPLICATIONS RECEIVED BY THE INFORMATION COMMISSIONER

APPLICATIONS FOR EXTERNAL REVIEW	NUMBER
Complaints (including informal/invalid)	113
Section 66(6) applications (No internal review)	18
Section 66(4) applications (Out of time)	4
Sections 66(4) and 66(6) applications	2
Section 35(1): Waiver of requirement to consult	1
Section 13(4): Applications for reduction of time	5
Section 13(5): Applications for extension of time	2
TOTAL	145

COMPLAINTS

Complaints may be made in respect of an agency’s decision to:

- refuse access to documents;
- give access to documents;
- give access to edited copies of documents;
- refuse to deal with access applications;
- defer giving access to documents;
- apply section 28 of the FOI Act;
- impose a charge or require the payment of a deposit; or
- not to amend personal information or make a notation as requested.

The 17 informal/invalid complaints received included complaints about the manner in which an agency had processed or dealt with the complainant's access application or application for amendment, but was not a complaint about a decision of a kind set out in s.65(1) or s.65(3) of the FOI Act.

Table 2 shows a summary of complaints received by agency type.

TABLE 2: COMPLAINTS RECEIVED (BY AGENCY TYPE)

AGENCY TYPE	COMPLAINTS		INFORMAL/INVALID		TOTAL	
	No.	%	No.	%	No.	%
State	76	67.25	13	11.50	89	78.75
Minister	4	3.50	0	0.00	4	3.50
Local	16	14.25	2	1.75	18	16.00
Other	0	0.00	2	1.75	2	1.75
TOTAL	96	85	17	15	113	100

Table 3 details the number of complaints received in 2006/07 and the agencies concerned.

TABLE 3: COMPLAINTS RECEIVED

AGENCY	COMPLAINTS	INVALID	TOTAL	AGENCY	COMPLAINTS	INVALID	TOTAL
Albany, City of	2		2	Corrective Services, Department of	6	3	9
Armadale, City of	2		2	Culture and the Arts, Department of		1	1
Armadale Health Service	2		2	Curtin University of Technology	2		2
Attorney General	1		1	Edith Cowan University	6		6
Attorney General, Department of the	3	1	4	Education and Training, Department of	1	1	2
Augusta-Margaret River, Shire of	2		2	Environment and Conservation, Department of	1		1
Bayswater, City of	1		1	Goldfields and South East Health Region	1	1	2
Bentley Health Service		2	2	Graylands Selby-Lemnos and Special Care Health Service	3		3
Busselton, Shire of	1		1	Great Southern Development Commission	1		1
Cambridge, Town of		1	1	Great Southern Health Region	1		1
Conservation and Land Management, Department of	1		1	Greenough, Shire of	1		1
Consumer and Employment Protection, Department of	2		2	Health, Department of	2	2	4
Heritage, Minister for	1		1	Premier and Cabinet, Department of the	1		1
Heritage Council of Western Australia	2		2	Public Transport Authority	1		1

TABLE 3: COMPLAINTS RECEIVED (cont...)

AGENCY	COMPLAINTS	INVALID	TOTAL	AGENCY	COMPLAINTS	INVALID	TOTAL
Housing and Works, Department of	3		3	Racing and Wagering Western Australia	1		1
Industrial Relations Commission	1		1	Racing, Gaming and Liquor, Department of	3		3
Industry and Resources, Department of	3		3	Royal Perth Hospital	1		1
Insurance Commission of Western Australia	5		5	Salaries and Allowances Tribunal	1		1
Legal Aid Western Australia	1		1	South Perth, City of	1		1
Legal Practitioner's Complaints Committee	1		1	South West Development Commission	1		1
Local Government and Regional Development, Department of	1		1	Sport and Recreation, Department of	2		2
Midwest and Murchison Health Region		1	1	Stirling, City of	2		2
Mundaring, Shire of	2		2	Swan, City of	1		1
Murdoch University	1		1	Swan Health Service	1		1
National Trust of Australia (WA)	1		1	Wanneroo, City of		1	1
Nedlands, City of	1		1	Water, Department of	1		1
Planning and Infrastructure, Department for	2		2	Wheatbelt Health Region	1	1	2
Planning and Infrastructure, Minister for	2		2	Unknown Agency		2	2
Police Force of Western Australia	9		9	TOTAL	96	17	113

OTHER APPLICATIONS

Other applications received fell into the following categories:

- by applicants or third parties seeking to lodge complaints out of time, pursuant to section 66(4) of the FOI Act or without internal review, pursuant to section 66(6), or both;
- by agencies for waiver of the requirement to consult with third parties when processing an application, pursuant to section 35(1); and
- by applicants seeking a reduction of the permitted period of 45 days within which an agency must deal with an application (s.13(4)) and by agencies seeking an extension of the permitted period (s.13(5)).

Thirty-two such applications were received in 2006/07, thirteen more than the number of such applications received in the previous reporting period.

Table 4 gives a detailed breakdown of these applications and the agencies concerned.

TABLE 4: OTHER APPLICATIONS RECEIVED

AGENCY	OUT OF TIME s.66(4)	NO INTERNAL REVIEW s.66(6)	BOTH s.66(4) & s.66(6)	WAIVER OF REQ'MENT TO CONSULT s.35(1)	REDUCTION OF TIME s.13(4)	EXTENSION OF TIME s.13(5)	TOTAL
Armadale, City of		1					1
Augusta-Margaret River, Shire of		2					2
Belmont, City of		1					1
Community Development, Department for				1			1
Curtin University of Technology					1		1
Education and Training, Department of		1					1
Environment and Conservation, Department of		1					1
Heritage Council of Western Australia		2					2
Indigenous Affairs, Department of					1		1
Industry and Resources, Department of		2					2
Joondalup, City of		1					1
Legal Practitioners Complaints Committee, The					1		1
Native Title, Office of		1					1
Planning and Infrastructure, Department for		1					1
Planning and Infrastructure, Minister for		2					2
Police Force of Western Australia	3	1					4
Premier and Cabinet, Department of the	1						1
Psychologists Registration Board		1					1
Racing, Gaming and Liquor, Department of						1	1
Sport and Recreation, Department of					1		1
Stirling, City of					1		1
Swan Health Service			1				1
Treasury and Finance, Department of						1	1
Victoria Plains, Shire of			1				1
Water, Department of		1					1
TOTAL	4	18	2	1	5	2	32

EXTERNAL REVIEW OUTCOMES

A total of 140 applications, made up of 111 complaints (including informal/invalid complaints) and 29 other applications were finalised during the year. Table 5 gives details of the types of applications dealt with in the 2006/2007 reporting period.

TABLE 5: APPLICATIONS DEALT WITH

TYPE OF APPLICATION	NUMBER
Complaints (including informal/invalid)	111
Section 66(4) Out of time	4
Section 66(6) No internal review	16
Both Section 66(4) and (6)	1
Application for reduction of time	5
Application for extension of time	2
Application for waiver of requirement to consult	1
TOTAL	140

Table 6 shows a summary of the outcomes of complaints finalised during the year, by agency category.

TABLE 6: OUTCOME OF COMPLAINTS FINALISED (BY AGENCY CATEGORY)

AGENCY TYPE	CONCILIATED		PUBLISHED DECISION		DECLINED		TOTAL	
	No.	%	No.	%	No.	%	No.	%
State	54	73.0	16	21.6	4	5.4	74	77.9
Minister	1	100.0	0	0.0	0	0.0	1	1.0
Local	15	75.0	4	20.0	1	5.0	20	21.1
Total	70	73.7	20	21.0	5	5.3	95	100

It can also be seen from Table 6 that only 21.6% of complaints concerning decisions of State Government agencies and 20.0% of complaints concerning decisions of local government agencies required resolution by way of a formal decision. Resolution by conciliation was achieved in 73.0% of complaints concerning State Government agencies' decisions, 75.0% of complaints concerning local government agencies' decisions and 100% of complaints concerning decisions by Ministers.

Tables 7 and 8 show details of the outcomes of the complaints dealt with during the year.

A total of 111 complaints (including 16 informal/invalid complaints) were finalised in the 2006/2007 reporting period. Of the 95 formal complaints, as defined in the FOI Act, that were finalised in the 2006/2007 reporting period, 20 proceeded to a published decision. The agency's decision was confirmed on 16 occasions; varied on 1 occasion; and set aside and substituted on 3 occasions. Seventy (73.7%) of the valid complaints resolved in the 2006/2007 reporting period were resolved by conciliation without the need for a formal decision. Four complaints were declined under s.67(1)(a) of the FOI Act (no jurisdiction) and one complaint was declined under s.67(1)(b) of the FOI Act (lacking in substance).

TABLE 7: OUTCOME OF COMPLAINTS FINALISED

AGENCY	CONCILIATED	PUBLISHED DECISION BY INFORMATION COMMISSIONER			DECLINED UNDER s.67(1)(a) & s.67(1)(b))	TOTAL MATTERS FINALISED
		AGENCY DECISION CONFIRMED	AGENCY DECISION VARIED	AGENCY DECISION SET ASIDE AND SUBSTITUTED		
Albany, City of		1				1
Armadale, City of	1					1
Armadale Health Service	1	1				2
Attorney General	1					1
Attorney General, Department of the	2	1			1	4
Augusta-Margaret River, Shire of	1					1
Bayswater, City of	2					2
Bentley Health Service					2	2
Busselton, Shire of	1					1
Cambridge, Town of	2			1	1	4

TABLE 7: OUTCOME OF COMPLAINTS FINALISED (cont...)

AGENCY	CONCILIATED	PUBLISHED DECISION BY INFORMATION COMMISSIONER			DECLINED UNDER s.67(1)(a) & s.67(1)(b))	TOTAL MATTERS FINALISED
		AGENCY DECISION CONFIRMED	AGENCY DECISION VARIED	AGENCY DECISION SET ASIDE AND SUBSTITUTED		
Canning, City of	1					1
Conservation and Land Management, Department of	1					1
Consumer and Employment Protection, Department of	1					1
Corrective Services, Department of	8				3	11
Cottesloe, Town of	1					1
Curtin University of Technology	1					1
Edith Cowan University	4				1	5
Education and Training, Department of	1	1	1		2	5
Environment, Department of	1					1
Fremantle Hospital and Health Service		1				1
Goldfields and South East Health Region	1				1	2
Graylands Selby-Lemnos and Special Care Health Service	1	1				2
Great Southern Health Region	1					1
Greenough, Shire of		1				1
Health, Department of	1				2	3
Heritage Council of Western Australia	2					2
Housing and Works, Department of	3					3
Industrial Relations Commission		1				1
Industry and Resources, Department of	2					2
Insurance Commission of Western Australia	3				1	4
Kimberley Health Region		1				1
King Edward Memorial and Princess Margaret Hospitals	1					1
Land Authority (LandCorp), Western Australian	1					1
Local Government and Regional Development, Department of		1				1
Medical Board of Western Australia	1					1
Melville, City of	1					1
Midwest and Murchison Health Region					1	1
Mundaring, Shire of	1					1
Murdoch University	1					1
Perth, City of	1					1
Planning and Infrastructure, Department for	2	1				3
Police Force of Western Australia	4	3			1	8

TABLE 7: OUTCOME OF COMPLAINTS FINALISED (cont...)

AGENCY	CONCILIATED	PUBLISHED DECISION BY INFORMATION COMMISSIONER			DECLINED UNDER s.67(1)(a) & s.67(1)(b) * *	TOTAL MATTERS FINALISED
		AGENCY DECISION CONFIRMED	AGENCY DECISION VARIED	AGENCY DECISION SET ASIDE AND SUBSTITUTED		
Premier and Cabinet, Department of the	2			1		3
Public Transport Authority	1	1				2
Roebourne, Shire of				1		1
Royal Perth Hospital	1	1				2
South Perth, City of					1	1
Sport and Recreation, Department of	1					1
Stirling, City of	2					2
Swan, City of	1					1
University of Western Australia, The	4					4
Wanneroo, City of					1	1
Water, Department of	1					1
Wheatbelt Health Region					1	1
Unknown Agency					2	
TOTAL	70	16	1	3	21	111

** The Information Commissioner does not deal with a complaint if it is outside her jurisdiction and may not deal with it if it is frivolous, vexatious, misconceived or lacking in substance (s.67 of the Act). Five of the 21 complaints declined related to formal complaints and the remaining 16 related to informal/invalid complaints.

TABLE 8: PUBLISHED DECISIONS

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0182006	Foot	Royal Perth Hospital	04/07/2006
D0192006	Kolo	Police Force of Western Australia	21/07/2006
D0202006	Kolo	Education and Training, Department of	25/07/2006
D0212006	Kolo	Public Transport Authority	25/07/2006
D0222006	"U"	Graylands Selby-Lemnos and Special Care Health Service	11/12/2006
D0232006	West Australian Newspapers Limited	Premier and Cabinet, Department of the	12/12/2006
D0242006	De Landgraft	Albany, City of	21/12/2006
D0252006	Post Newspapers Pty Ltd	Cambridge, Town of	22/12/2006
D0262006	Allen	Greenough, Shire of	22/12/2006
D0012007	Rogerson	Education and Training, Department of and Suzanne Cooper	11/01/2007
D0022007	"A"	Police Force of Western Australia	31/01/2007
D0032007	Kin Kin Resorts Pty Ltd	Local Government and Regional Development, Department of	23/02/2007
D0042007	"B"	Armadale Health Service	27/02/2007
D0052007	Richardson	Police Force of Western Australia	16/03/2007

TABLE 8: PUBLISHED DECISIONS (cont...)

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0062007	Kin Kin Resorts Pty Ltd	Planning and Infrastructure, Department for	04/04/2007
D0072007	Betfair Pty Ltd	Attorney General, Department of the	13/04/2007
D0082007	Woodside Defense Group	Fremantle Hospital and Health Service	17/04/2007
D0092007	Hudson	Kimberley Health Region	18/04/2007
D0102007	Alvarez	Industrial Relations Commission, Western Australian	21/05/2007
D0112007	Geoff Ninnes Fong and Partners Pty Ltd	Roebourne, Shire of and Donovan Payne Architects Pty Ltd	13/06/2007

OTHER MATTERS

There were 29 other applications finalised this year. They were applications to make a complaint out of time (s.66(4)) or where internal review had not been applied for or had not been completed (s.66(6)); applications for waiver of the requirement to consult third parties (s.35(1)); applications for a reduction of the permitted time for an agency to deal with an access application (s.13(4)); and applications for an extension of the permitted time for an agency to deal with an access application (s.13(5)). These, together with the outcomes, are shown in Table 9.

TABLE 9: OUTCOME OF OTHER APPLICATIONS FINALISED

AGENCY	NO INTERNAL REVIEW			OUT OF TIME s.66(4)		BOTH s.66(4) and	REDUCTION OF TIME s.13(4)				EXTENSION OF TIME S.13(5)		WAIVER OF REQUIREMENT TO CONSULT	TOTAL MATTERS FINALISED
	W	A	R	W	R		W	A	C	R	A	R		
Armadale, City of	1													1
Augusta-Margaret River, Shire of	1		1											2
Belmont, City of	1													1
Community Development, Department for												1		1
Curtin University of Technology								1						1
Education and Training, Department of	1													1
Environment and Conservation, Department of	1													1
Heritage Council of Western Australia	1		1											2
Indigenous Affairs, Department of								1						1
Industry and Resources, Department of			2											2
Joondalup, City of			1											1
Legal Practitioners Complaints Committee, The										1				1
Native Title, Office of			1											1
Planning and Infrastructure, Department for	1													1
Police Force of Western Australia				2	1									3
Premier and Cabinet, Department of the					1									1
Psychologists Registration Board			1											1
Racing, Gaming and Liquor, Department of											1			1
Sport and Recreation, Department of								1						1
Stirling, City of								1						1
Swan Health Service						1								1
Treasury and Finance, Department of											1			1
Water, Department of		1												1
Water Corporation			1											1
TOTAL	7	1	8	2	2	1	2	1	1	1	1	1	1	29

Key: A—Approved; C—Conciliated; R—Refused; W—Withdrawn

APPEALS TO THE SUPREME COURT

There were no appeals filed with the Supreme Court of Western Australia during the past year in relation to decisions I made in the reporting period. Last year I reported that there was one outstanding appeal still before the Supreme Court arising from a decision of the former Information Commissioner. It is my understanding that that appeal, from the former Information Commissioner's decision in *Re Thompson and Department of Agriculture* [2002] WAICmr 26, has not yet been heard by the Supreme Court.

ADVICE AND AWARENESS

The *Advice and Awareness* team provides members of the public and agencies with advice and assistance in exercising their respective rights and obligations and how to follow the correct procedures for making or dealing with an application under the FOI Act. Policy development within agencies is encouraged so that the impact of the obligations imposed on agencies by the FOI Act on their day-to-day operations is minimised. Many potential disputes are resolved informally with the assistance of my staff.

All members of my staff undertake the following functions for which the *Advice and Awareness* team is primarily responsible:

- training courses for agency staff;
- targeted workshops/seminars;
- provision of assistance, briefings and advice to agencies on the processes required by the FOI Act;
- visits to country regions;
- provision of advice and assistance to members of the public on the procedure for exercising their rights under the FOI Act;
- briefings to community groups;
- production of articles providing advice and guidance on the workings of the FOI Act;
- distribution of brochures to assist applicants;
- answering enquiries by e-mail, telephone or at the counter;
- dealing with general correspondence;
- maintenance of statistical data and other information to assist in reporting to Parliament; and
- executive support including matters relating to the management and funding of the office.

TRAINING COURSES AND BRIEFINGS

The office is proactive in raising the awareness and understanding of the procedures and processes prescribed by the FOI Act. Apart from requests received for training or assistance, needs in the public sector are identified from a survey of agencies. Due to staff turnover, there is a periodic need in agencies for new staff to be briefed on the FOI process and their obligations. This is done by conducting workshops, special forums, briefings, seminars, or presentations for FOI Coordinators and decision-makers. These are conducted on an interactive basis, allowing for immediate response to questions and clarification of issues concerning FOI procedures and practices. The office provides a speaker in response to an invitation from any organisation requiring an explanation of the FOI process.

A number of formal briefings, presentations and training sessions were conducted throughout the year under review. General briefings are tailored in each case to meet the needs of applicants or agencies. Briefings, presentations and training sessions given by staff of the office are shown in Table 10.

FOI Coordinator Workshops

Workshops are scheduled based on the level of demand and are conducted by the office, at no charge to agencies. Eleven one-day FOI Coordinator workshops were held during the year in the metropolitan and regional areas. The course introduces participants to the FOI legislation and the requirements which must be observed during the processing and deciding of an application. Each session covers requests for information and the process to follow; exemptions; third party consultation; application fees and charges; notices of decision; and the role of the Information Commissioner. Participants have the opportunity to raise issues of concern and have the process explained to them in a practical way. Participants meet staff of this office who can be contacted should they require assistance when dealing with FOI requests. A comprehensive manual is provided to each participant at the course, for future reference.

A benefit of the shared resources since collocation with other accountability agencies is that we were able to host the majority of the FOI Coordinators' workshops in 2006/07 at our own premises. Feedback from participants who attended the workshops was very positive.

TABLE 10: FORMAL TRAINING AND PRESENTATIONS

DATE	PRESENTATION STYLE	AUDIENCE
19 July 2006	Decision-makers's Forum	<i>Officers from various State and local government agencies</i>
25 July 2006	FOI Briefing	<i>FOI Coordinators' Group held at Disability Services Commission</i>
26 July 2006	FOI Coordinators' Workshop	<i>Shire of Dardanup</i>
16 August 2006	FOI Coordinators' Workshop	<i>Police Service of WA</i>
13 September 2006	FOI Coordinators' Workshop	<i>Officers from various State and local government agencies</i>
21 September 2006	FOI Coordinators' Workshop	<i>Department of Corrective Services</i>
11 October 2006	Decision-makers's Forum	<i>Officers from various State and local government agencies</i>
18 October 2006	FOI Briefing (2)	<i>City of Belmont</i>
8 November 2006	FOI Coordinators' Workshop	<i>Officers from various State and local government agencies</i>
1 December 2006	FOI Coordinators' Workshop	<i>Officers from various State and local government agencies</i>
18 January 2007	FOI Briefing	<i>City of Melville</i>
30 January 2007	FOI Coordinators' Workshop	<i>Officers from various State and local government agencies</i>
7 February 2007	FOI Briefing	<i>Sir Charles Gairdner Hospital</i>
21 February 2007	FOI Coordinators' Workshop	<i>Officers from various State and local government agencies</i>
27 February 2007	FOI Briefing	<i>State Revenue</i>
12 March 2007	FOI Briefing	<i>Office of Katie Hodson-Thomas MLA</i>
20 March 2007	FOI Coordinators' Workshop	<i>Officers from various State and local government agencies</i>
21 March 2007	Decision-makers's Forum	<i>Officers from various State and local government agencies</i>
27 March 2007	FOI Briefing	<i>Department of Culture and the Arts</i>
12 April 2007	FOI Briefing	<i>Worksafe</i>
18 April 2007	FOI Coordinators' Workshop	<i>Officers from various State and local government agencies</i>
23 April 2007	Decision-makers's Forum	<i>Department of Treasury & Finance – Office of Government Procurement</i>
7 May 2007	FOI Briefing (2)	<i>Department of Treasury & Finance – Office of Government Procurement</i>
23 May 2007	FOI Coordinators' Workshop	<i>Officers from various State and local government agencies</i>
7 June 2007	FOI Briefing	<i>Graylands Selby-Lemnos & Special Care Health Service</i>
20 June 2007	Decision-makers's Forum	<i>Officers from various State and local government agencies</i>

In this financial year eleven ‘FOI Coordinators’ Workshops’ were conducted. Officers from the following agencies attended (number in attendance is shown in brackets):

AIMS Corporation (2)	Legal Practitioners Complaints Committee (2)
Agriculture & Food, Department of (3)	Medical Board of Western Australia (1)
Albany, City of (2)	Mid-West Development Commission (1)
Armadale Health Service (2)	Mindarie Regional Council (1)
Attorney General, Department of the (7)	Minister for Government Enterprises, Office of the (1)
Augusta-Margaret River, Shire of (4)	Minister for Local Government and Regional Development; Fisheries; The Kimberley; Pilbara and Gascoyne, Office of the (1)
Bentley Health Service (1)	Mundaring, Shire of (2)
Builders’ Registration Board (2)	Murdoch University (1)
Busselton, Shire of (1)	Murray, Shire of (4)
Capel, Shire of (1)	North Metropolitan Health Service (1)
Consumer & Employment Protection, Department of (23)	Northam, Town of (3)
Corrective Services, Department of (9)	Osborne Park Hospital (1)
Dardanup, Shire of (3)	Police Force of Western Australia (10)
Derby Health Service (2)	Public Advocate, Office of the (1)
Donnybrook/Balingup, Shire of (2)	Public Sector Standards Commissioner, Office of the (1)
Drug & Alcohol Office (1)	Roebourne, Shire of (2)
East Perth Redevelopment Authority (1)	Royal Perth Hospital (1)
Education & Training, Department of (2)	Serpentine-Jarrahdale, Shire of (1)
Environment, Department of (2)	South Metropolitan Mental Health Service (1)
Fire & Emergency Services Authority (2)	South West Development Commission (1)
Fremantle Hospital (1)	South West Regional College of TAFE (1)
Fremantle, City of (1)	Sports Centre Trust, Western Australian (1)
Gold Corporation (2)	State Supply Commission (1)
Gosnells, City of (2)	Stirling, City of (3)
Graylands Selby-Lemnos & Special Care Health Service (2)	Swan Health Service (1)
Harvey, Shire of (1)	Swan TAFE (1)
Health Review, Office of (2)	Swan, City of (1)
Health, Department of (1)	Tourism Commission, Western Australian (2)
Heritage Council of Western Australia (1)	Treasury & Finance, Department of (3)
Horizon Power (2)	Treasury Corporation, Western Australian (1)
Housing & Works, Department of (2)	Victoria Park, Town of (1)
Indigenous Affairs, Department of (1)	WA Country Health Service – Great Southern (1)
Insurance Commission of Western Australia (1)	WA Country Health Service – Wheatbelt (1)
Kalgoorlie-Boulder, City of (1)	Wanneroo, City of (1)
King Edward Memorial Hospital (1)	Waroon, Shire of (2)
Kwinana, Town of (1)	Water, Department of (2)
Legal Aid Western Australia (1)	Western Power (1)

Decision-makers' Forums

The half-day decision-makers' forum assists staff in agencies, including senior managers who may have to be the decision-maker in respect of an application. It covers the options available to agencies when responding to large applications; assisting an applicant to re-define the scope of the application; recommended procedures before refusing to deal with an application; the process of decision-making; exemptions; the public interest test; the preparation of a notice of decision that complies with the FOI Act; and the internal and external review processes. Attendees also establish contact with staff of my office who may be called for advice in the future, which is especially useful for those agencies which do not receive many applications. Five of these were conducted in 2006/07, attended by a total of 59 officers of State Government agencies and 15 officers of local government agencies.

Five 'Decision-makers Forums' were held and included officers from the following agencies (number in attendance is shown in brackets):

Bentley Health Service (1)	Gold Corporation (1)	Minister for Planning & Infrastructure, Office of (2)
Central TAFE (2)	Gosnells, City of (2)	Murdoch University (1)
Cockburn, City of (2)	Graylands Selby-Lemnos and Special Care Health Service (1)	Nedlands, City of (2)
Community Development, Department for (1)	Health, Department of (2)	Public Sector Standards Commissioner, Office of the (2)
Consumer & Employment Protection, Department of (12)	Heritage Council of Western Australia (1)	Racing & Wagering Western Australia (1)
Corrective Services, Department of (2)	Housing & Works, Department of (2)	South Perth, City of (1)
Cottesloe, Town of (1)	Industry & Resources, Department of (1)	State Administrative Tribunal (1)
Disability Services Commission (1)	Kwinana, Town of (2)	Stirling, City of (1)
Donnybrook/Balingup, Shire of (1)	Legal Aid Western Australia (4)	Treasury & Finance, Department of (13)
Edith Cowan University (1)	Legal Practitioners Complaints Committee (2)	Wanneroo, City of (2)
Energy, Office of (1)	Melville, City of (1)	Water, Department of (1)
Fremantle, City of (1)	Minister for Education, Office of the (1)	West Coast TAFE (1)

WEB SITE AND ELECTRONIC COMMUNICATIONS

The office web site (www.foi.wa.gov.au) contains an extensive amount of information about the FOI process. It is structured into sections including: *What is FOI?* which describes the objects of the FOI Act; *Publications* which contains the FOI Act and Regulations, brochures and articles giving guidance on the FOI process; *Frequently Asked Questions (FAQs)* which contains guides to the FOI process and some of the most frequently cited exemption clauses; *Need Help with FOI?*; *About the Information Commissioner*; and *Decisions* which contains searchable copies of all formal decisions made on complaints.

The web site allows searches of published decisions to be conducted in a variety of ways, such as searching by agency or complainant name; by exemption clause or section of the FOI Act; by catchword; and many more. This is a valuable resource for agencies and members of the public to research the interpretation given to particular exemptions and sections of the FOI Act. Such ready access to precedents contributes to a higher level of understanding and application of the legislation by decision-makers.

From 1 July 2005, the office began including on the web site summaries of selected conciliated complaints to give agencies and members of the public some idea of alternative means of dealing with applications and resolving complaints.

There are also links to other related web sites. A section containing *What's New/Training* contains the latest news and training information available. *Contact Us* provides address, telephone, facsimile and e-mail information.

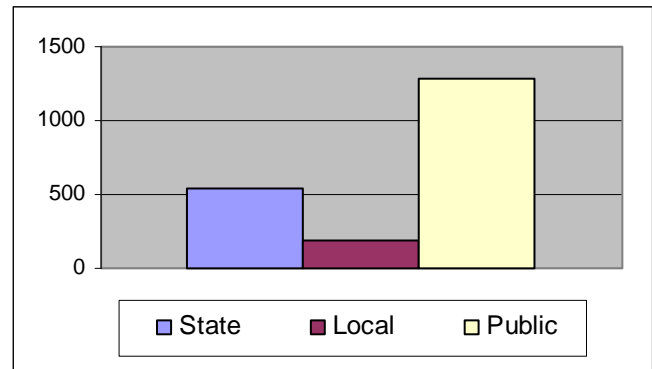
We have received positive feedback about our web site, particularly for its user-friendly links and the amount of information readily available. There has been a steadily increasing number of user sessions, which illustrates a high level of interest in FOI generally; in the process to follow in making an application; and in my published decisions. Any suggestions regarding the site or resources available online are welcome and appreciated: please send them to info@foi.wa.gov.au.

E-mail is utilised by the office wherever possible. Data, such as annual statistics from agencies and responses from participants to surveys of satisfaction levels, is also obtained through this medium where possible or via forms which can be completed and submitted online through our website.

TELEPHONE ENQUIRIES

There were 2,020 telephone enquiries received during the year (2,082 in 2005/06). Over 64% of telephone enquiries received (67% in 2005/06) were from members of the public seeking advice on how to make an application, or to enquire about or confirm their review rights. The balance were from officers of State and local government agencies seeking assistance in dealing with access applications or advice regarding other statutory obligations under the FOI Act.

FIGURE 5: TOTAL TELEPHONE ENQUIRIES



State 537; Local 194; Public 1289

WRITTEN ENQUIRIES

Written requests for advice and misdirected access applications are dealt with almost exclusively by members of the *Advice and Awareness* team. The average turnaround time for responses to written enquiries of this nature is two days. These matters are separately identified and reported on as part of the *Advice and Awareness* output.

There were 323 written enquiries for advice and assistance received and dealt with during the year. The written enquiries were received by letter and by email.

Ninety-one of these were misdirected access applications. That is, they were applications which should have been sent to the agency holding the documents sought and not to this office. As in past years, the agencies the subject of the greatest number of misdirected applications were the Police Force of Western Australia (35) and the Department of Corrective Services (16). Written enquiries, including misdirected applications, resulted in advice being given to the correspondent as to the proper procedures to be followed or other matters relating to the administration of the FOI Act. In some cases, where the enquiry was from an applicant concerning a particular application, enquiries were also made with the agency concerned to ascertain the status of the application to assist this office in responding helpfully to the applicant and, if necessary, advice was also given to the agency in those cases.

Table 11 shows a summary of applications that were mistakenly directed to this office instead of to the agency holding the documents.

TABLE 11: MISDIRECTED APPLICATIONS RECEIVED

AGENCY	TOTAL	AGENCY	TOTAL
Attorney General, Department of the	2	Planning and Infrastructure, Department for	2
Community Development, Department for	4	Police Force of Western Australia	35
Corrective Services, Department of	16	Premier and Cabinet, Department of the	1
Environment and Conservation, Department of	2	Public Sector Standards Commissioner, Office of the	1
Fire and Emergency Services Authority of Western Australia	1	Royal Perth Hospital	1
Geraldton Health Service	1	Serpentine-Jarrahdale, Shire of	1
Graylands Selby-Lemnos and Special Care Health Service	2	Swan and Kalamunda Health Service	2
Health, Department of	1	Water Corporation	1
Indigenous Affairs, Department of	1	Western Power	1
Industry and Resources, Department of	1	Worksafe Western Australia	1
Kalamunda Health Service	1	Unknown Agency	12
Medical Board of Western Australia	1	TOTAL	91

INFORMATION STATEMENT SURVEY

In last year's annual report I advised of the results of the survey of agencies to determine the level of compliance with sections 94-96 of the FOI Act which require agencies to publish an up-to-date information statement about the agency every twelve months.

In 2007 a similar survey was sent to 133 State Government and 142 local government agencies together with the annual statistical return. The difference in the number of agencies surveyed this year as compared to last year is because the previous survey was sent to agencies whose current email address and contact details were registered with my office and others have since been identified. The survey was in three parts; the first required the agency to provide statistics as required by section 111(3) of the FOI Act; the second asked for feedback on the advisory services provided by my office; and the third requested information in relation to the agency's information statement. Responses were received from 263 government agencies (96%). Of those, 100% of State government agencies completed the statistical return. However, of those 263, 17 State government agencies (13%) and 16 (11%) of local government agencies failed to complete the section of the survey that related to the Information Statement.

The survey asked agencies to respond to the following questions about the agency's information statement:

1. *Are the details contained in your Information Statement current?*
2. *When was the Information Statement last reviewed and updated?*
3. *When was your Information Statement last republished?*
4. *Is the Information Statement published in your agency's annual report or as a "stand alone" document?*

5. *In what form is the Information Statement published (Hardcopy, Electronic, Both)?*
6. *If available in electronic form, web address of the document?*
7. *If only available in hardcopy form, and a copy has not been provided within the last 12 months, when can a current copy be expected to be delivered to my office?*

Responses to the question “when was your information statement last reviewed?” indicated that 24% of responding agencies last reviewed their information statements in 2007; 38% in 2006; 6% in 2005; and 6% before 2005. Twenty-six percent (26%) did not indicate or did not respond.

Agencies’ responses indicated that 17% published an information statement in 2007; 41% in 2006; 6% in 2005; and 7% before 2005. Twenty-eight percent (28%) did not indicate or did not respond.

One hundred and forty-seven (147) agencies advised that their information statement is published as a standalone document; 75 agencies incorporated the statement in their annual report and a number did not respond.

One hundred and two (102) agencies (39%) stated that the information statement was available in hardcopy; 35 (13%) stated that it was available electronically; and 100 (38%) stated it was available both as a hardcopy document and electronically.

Only 61 State and local government agencies have provided the Information Commissioner with an electronic copy or hard copy of their updated information statement in the past 12 months. All of the information statements received have been analysed for compliance with the FOI Act which prescribes as follows what the information statement is required to contain:

- a statement of the structure and functions of the agency;
- a description of the ways in which the functions (including, in particular, the decision-making functions) of the agency affect members of the public;
- a description of any arrangements that exist to enable members of the public to participate in the formulation of the agency’s policy and the performance of the agency’s functions;
- a description of the kinds of documents that are usually held by the agency including: which kinds of documents can be inspected at the agency under a written law other than the FOI Act (whether or not inspection is subject to a fee or charge); which kinds of documents can be purchased; and which kinds of documents can be obtained free of charge;
- a description of the agency’s arrangements for giving members of the public access to the documents mentioned above, including details of library facilities of the agency that are available for use by members of the public;
- a description of the agency’s procedures for giving members of the public access to the documents of the agency under Part 2 of the FOI Act including: the designation of the officer or officers to whom initial inquiries as to access to documents can be made; and the address or addresses at which access applications can be lodged; and
- a description of the agency’s procedures for amending personal information in the documents of the agency under Part 3 of the FOI Act including: the designation of the officer or officers to whom initial inquiries as to amendment of personal information can be made; and the address or addresses at which applications for amendment of personal information can be lodged.

Of the information statements provided the majority did describe their agency’s structure and function, the kinds of documents held, the operation of the FOI Act and the agency’s FOI procedures. Fewer contained information concerning the ways in which their functions affect members of the public or how the public can participate, if at all, in the formulation of policy or carrying out of functions.

A number of the information statements described the agency's structure and functions but did not describe the FOI process which would be of assistance to applicants. Other agencies adequately described the FOI process but did not give sufficient details about the agency.

Each agency that provided an information statement has been given feedback about its information statement and, where necessary, how it can be changed to comply with the FOI Act.

One of the issues of concern I outlined in my previous annual report related to incorrect information being given as to the application fee and charges. A number of information statements outlined a regime of fees and charges that did not accord with the prescribed regime. Each individual agency whose statement did not comply has been notified that the application fee and charges that can be imposed are only those prescribed by the *Freedom of Information Regulations 1993* and they cannot be varied by individual agencies or without amendment of the Regulations.

Other issues that were identified included agencies requiring access applicants to complete an application form prepared by the agency. There is no requirement under the FOI Act for an access applicant to complete an application form provided by an agency. The FOI Act requires that applications be in writing; give enough information to enable identification of the requested documents; give an address in Australia; and be lodged at the agency accompanied by an application fee (where the application is for non-personal information). If an application in that form is received by an agency it is a valid application whether or not it is on an agency form and must be dealt with by the agency accordingly. Although the use of a *pro forma* form may be helpful to the agency and, in some cases, may help the applicant to make a valid application, an agency cannot insist on its own form being used and, if it refuses to accept or deal with an application solely on that basis, it will be in breach of its obligations under the FOI Act.

A random sample of 25 agencies that reported their information statements were available on the web were checked with varying results. Of the 25 agencies sampled, the information statements of 8 were readily accessible via the agency's website. Unfortunately, however, 4 were difficult to locate and in 13 cases could not be found. I recommend to those agencies that enhancements be made on the website to make the information statement readily accessible. If it is not easily accessible by my staff, it is not accessible by members of the public and not serving the purpose intended by the FOI Act. As a result of that exercise, my office has now commenced a project that entails visiting the website of each agency that has advised that its information statement is published on its website to ascertain the ease of accessibility to each. Feedback will be given where the information statement is not easily accessible and it is proposed to report on the result of that project next year.

It is the responsibility of agencies to comply with the FOI Act, and my office will continue to monitor the use of the internet to publish Information Statements and will follow up with those agencies that do not meet their responsibilities under ss.94-96.

ADMINISTRATION

The functions I am required to perform result in the development and delivery of a range of services to the public, agencies and Parliament, and include:

- complaint resolution;
- giving advice about the FOI Act and procedures;
- the publication of formal decisions on complaints;
- the distribution of awareness raising and educational material;
- talks and information sessions for community groups;
- a free-call telephone line for country callers;
- a web site at <http://www.foi.wa.gov.au>;
- a telephone advisory service;
- FOI training sessions;
- specifically tailored meetings or advisory sessions for agencies; and
- providing an annual report on the workings of the legislation.

The office has a Customer Service Charter and Code of Conduct, which all staff are required to observe. Copies are available on request.

Performance Standards have been established to ensure that all staff undertake their duties in a manner that is a credit to the professional and independent status of the office.

STAFF CHANGES

None.

SUPPORT SERVICES

Corporate service support, consisting of financial and human resources services including workplace safety, disability services, equal opportunity employment and language services when required, is provided by the Department of the Attorney General under a service agreement. Due to the small size of the office, human resource reporting requirements are met by the Department. The assistance provided by relevant staff of the Department of the Attorney General is acknowledged and appreciated.

COMPLIANCE WITH OTHER ACTS

Compliance with legislative and associated reporting requirements which apply to the office and which is not dealt with elsewhere in this report is reported below.

Disability Services Act 1993 (s.29): Development of a Disability Access and Inclusion Plan (DAIP) was not initiated pending, firstly, collocation with the Ombudsman, Commissioner for Public Sector Standards, Office of Health Review and Commonwealth Ombudsman, which required moving premises and, secondly, the proposed amalgamation of the offices of Information Commissioner and Ombudsman. Although collocation has been effected, the development of a DAIP has not been progressed pending a firm timeframe for the proposed amalgamation.

Electoral Act 1907 (s.1752E): There was no expenditure incurred on advertising, market research polling, direct mail or media advertising activities during the year.

Equal Opportunity Act 1984 (s.146): An updated Equal Opportunity Plan was submitted in September 2003 and is effective to 2008. The office has developed strategies for EEO outcomes so no action in this area was required in the reporting period. No recruitment was undertaken in the reporting period and the equity and diversity profile of the office remains unchanged. The office currently has only 10 officers, including the CEO. Seven (70%), including the CEO, are women and three (30%) are men. One is part-time and there is a diversity of backgrounds, including one officer from a non-English speaking background.

REPORT ON OPERATIONS continued

State Records Act 2000 (s.61 and State Records Commission Standards - Standard 2, Principle 6): The office Record Keeping Plan was approved by the State Records Office in November 2003. At the same time, an “Internal Procedures Manual for Records Management” was also created and made available to all staff in hard copy and on the office intranet. Staff were brought up to date on the correct record keeping process at that time, and those processes have not changed. Any new staff (of which there has only been one since 2003) are provided with a copy of this manual. Due to the small size of the office and the relatively small amount of incoming and outgoing correspondence, the record keeping practices of the office are simple and appropriate to the business needs of the office.

Also in 2003, the office administrative record keeping system was redesigned to adhere to the Keyword AAA record keeping system, and as part of that process the office administrative and functional thesaurus was created. All administrative files were closed on 1 January 2003 and records from that date are now filed as set out in the thesaurus. The office records manager has the responsibility of making sure all records are properly logged and filed. The records manager (and select other staff) have attended workshops and seminars centering on records management issues, and further staff instruction on the record keeping practices of the office will be conducted when the Record Keeping Plan is reviewed in 2008, as required by the State Records Office.

Government Policies

The office endeavours to comply with government policies insofar as they do not interfere with or compromise the independence of the operation of the office from executive government.