

SIGNIFICANT ISSUES AND TRENDS

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3.1 Agency Charging

There has been an increasing trend in the amount of charges being collected by agencies from applicants seeking access to documents containing non-personal information. The number of non-personal applications to agencies has risen by a total of 77% since 2005. Despite this, the amount of charges collected within the commensurate period has increased by a total of 176%.

Initial perusal of the statistical data collected from agencies indicates that much of the increase in charges can be attributed to a small number of agencies. It can also be seen that, especially over the past two years, the total amount of charges reduced, or waived, at the discretion of agencies has dropped significantly. It therefore appears likely that agencies have simply chosen to collect more of the charges which they can levy under the Act, rather than waiving them as a matter of course.

However, total complaints made to my office in relation to the imposition of charges remain very low, with only 3 complaints over the last 4 years. This suggests that charges are not presenting a significant barrier to persons exercising their rights under the Act.

3.2 Complaints made by Members of Parliament

This year has seen a significant increase in total complaints and, in particular, complaints made by Members of Parliament. In the 5 years to 2007/08 a total of 13 complaints were made by Members of Parliament at an average of around 3 complaints per year. However, during the current reporting year 80 complaints were made to this office by Members of Parliament. This is an increase of 76 from the 4 that were received last year. Many of these were complaints against decisions of Ministers.

The total number of complaints received (181) has increased by 79 from last year. Given the total number received in each of the 5 years to 2007/08, it appears that the significant increase in total matters received in 2008/09 is largely attributable to the increase in complaints made by Members of Parliament.

3.3 Supreme Court appeals

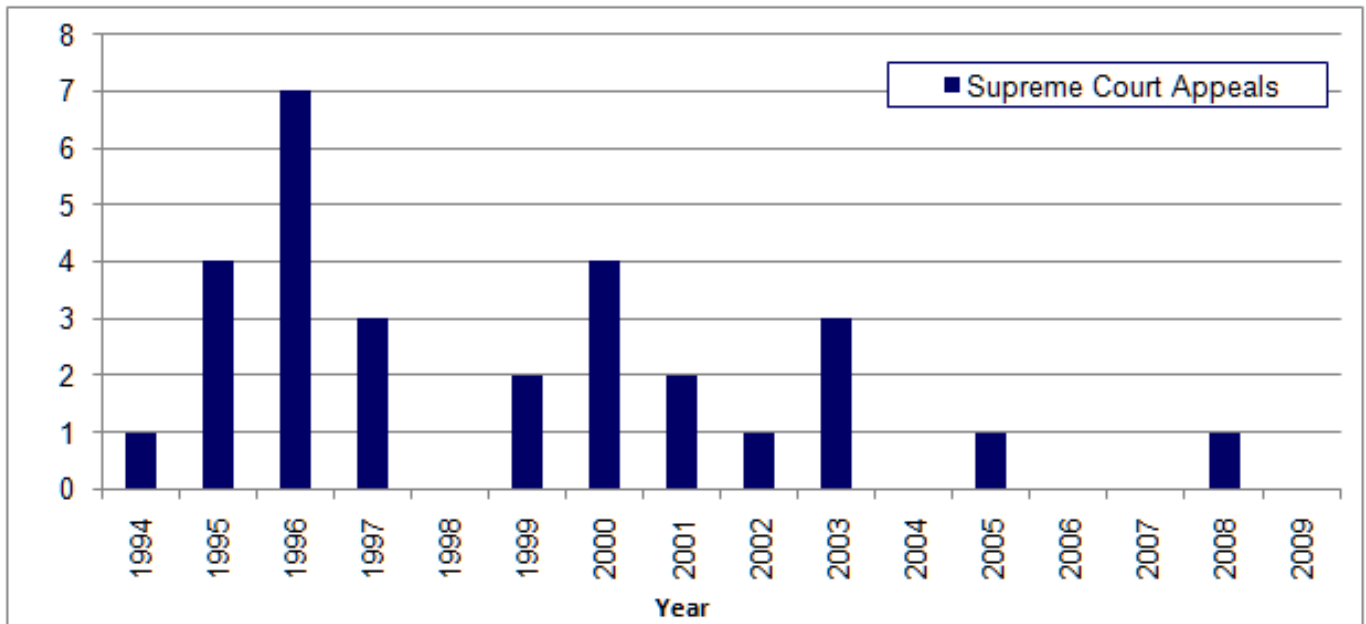
This year there has been no appeal to the Supreme Court of a decision of the Commissioner. Since commencement of the FOI Act in 1993, there has been a gradual decline in the number of Supreme Court appeals relating to FOI matters, as indicated in Figure 2 on the next page.

In all, since commencement of the Act, there have been 12 appeals to the Supreme Court that have proceeded to a decision (although a number of additional appeals reflected in Figure 2 were lodged but were withdrawn or otherwise did not proceed to a decision). Nine of the 12 appeals heard have been made by an agency as appellant, rather than by individual complainants. Since 2002, there have been only 3 appeals, two made by agencies and one by an applicant. The reducing trend in appeals is an indicator that the scope and interpretation of the FOI Act is becoming better understood and accepted as experience with the FOI Act grows.

3.4 Agency Statistics 2009

Section 111 of the Act requires that the Information Commissioner's annual report to the Parliament includes certain specified information relating to the number and nature of applications under the 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 2008/09 is set out in detail in the statistical tables at the end of this report. The following is an overview.

FIGURE 2: Supreme Court Appeals relating to FOI matters



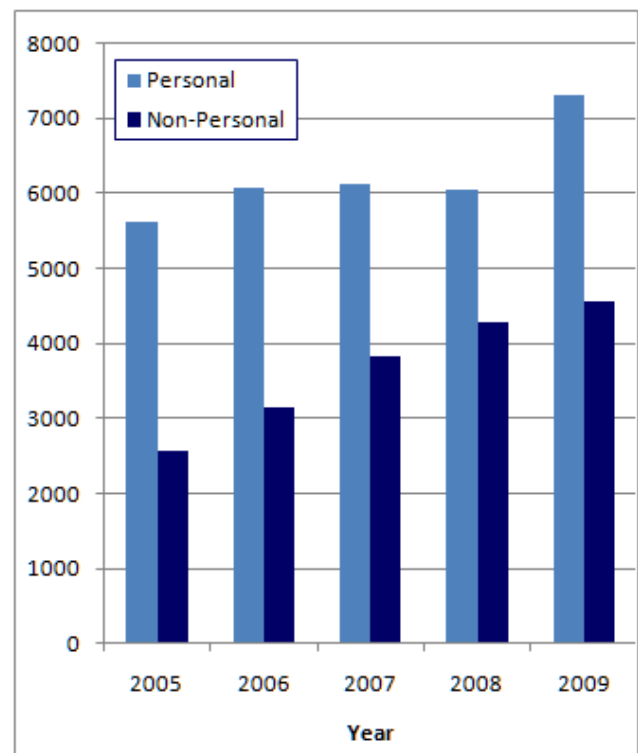
The primary responsibility for making decisions on FOI applications and otherwise giving effect to the provisions of the Act rests with agencies. Applications under the Act are made in the first instance to the government agency holding, or likely to hold, the documents sought, and the agency must deal 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 3,323 at the end of the first full financial year of operation of the FOI Act (1994/95) to 12,336 in the year under review. That represents an increase of approximately 271% in 14 years from 1995 and 9.6% from last year (11,255).

3.4.1 Applications

From the statistical tables at the end of this report, it can be seen that, as in recent previous years, the Western Australia Police received the highest number of applications made to a single agency (1,847 - an increase of 8.9% from last year), with the next highest being received by Royal Perth Hospital (1,637 - an increase of 11.5% from last year) and Sir Charles Gairdner

Hospital (989 - an increase of 2.9% from last year), and another 4,207 in total received by various other health service providers (hospitals, health services and the Department of Health), representing a total increase of 8.4% over last year.

FIGURE 3
Number of Applications Decided — All Agencies



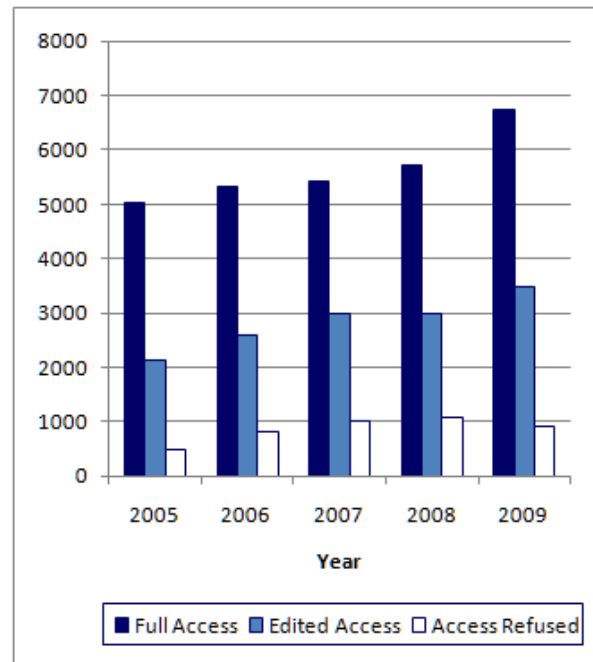
Of the 12,336 applications received by agencies in 2008/09, 509 (just over 4.1%) were received by local government agencies and 11,827 (95.9%) by State Government agencies. Of the local government agencies, the City of Stirling received the highest number of applications (56), followed by the City of Joondalup (34), the City of Swan (32), the Shire of Kalamunda (24), the City of Melville (23) and the City of Wanneroo (21). A number of local government agencies located in the country areas reported having received either no applications or very few applications.

Of the applications made to State Government agencies, 267 were made to Ministers (including Ministers prior to the 2008 State election), significantly more than the number made to Ministers last year (94). The Minister receiving the highest number of applications was the Hon T Buswell, Treasurer; Minister for Commerce; Science and Innovation; Housing and Works (50), with the next highest being the Hon B Grylls, Minister for Regional Development; Lands; Minister Assisting the Minister for State Development; Minister Assisting the Minister for Transport (25).

3.4.2 Decisions

Of the decisions on access made by Ministers in the reporting period, 28 (13%) were to give full access; 153 (70%) were to give access to edited copies of documents; and 36 (17%) were to refuse access. The statistical tables also reveal that 10,519 decisions on access applications were made by State Government agencies i.e. exclusive of local government agencies and Ministers, under the FOI Act in 2008/09. Of those decisions made, 62.6% resulted in the applicant being given access in full to the documents sought; 28.9% resulted in the applicant being given access to edited copies of the documents sought; and just under 0.5% 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). Only 8.1% of the decisions made were to refuse access.

**FIGURE 4
Outcome of Decisions — All Agencies**

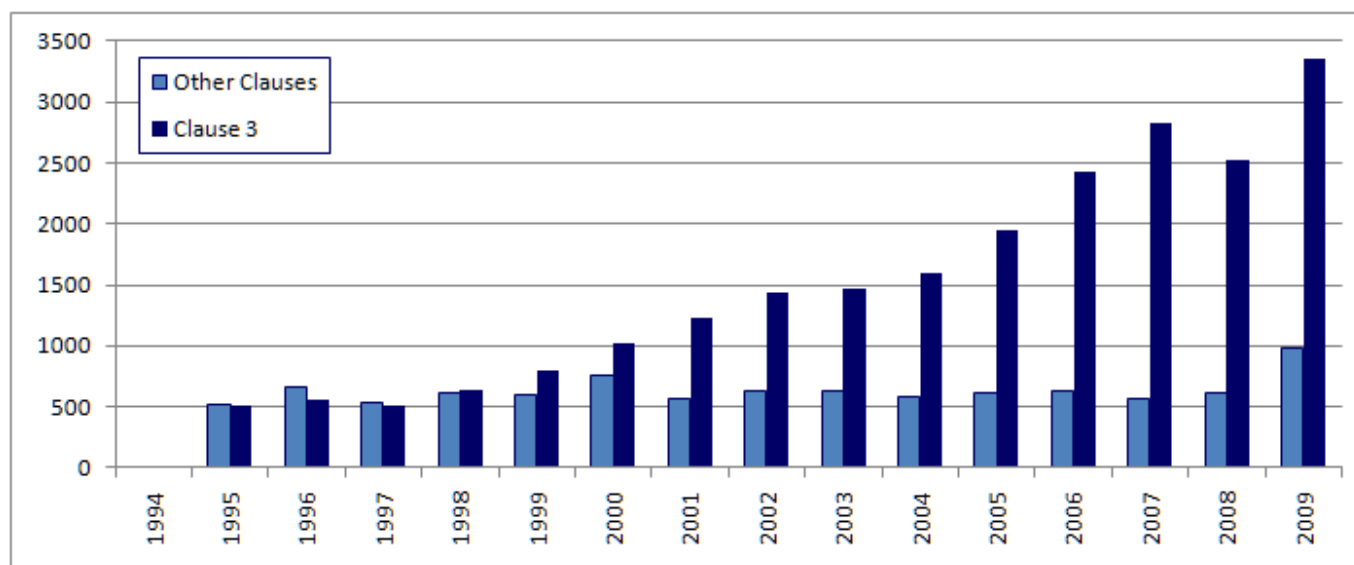


Those figures indicate that approximately 91.9% of the 10,519 decisions made by agencies on FOI applications were to the effect that access in some form was given. That is consistent with the statistics for the previous year.

3.4.3 Exemptions

Also consistent with previous years, the exemption clause most frequently claimed by agencies from both state and local government sectors (excepting those claimed by Ministers and described above) was clause 3, which exempts from disclosure personal information about individuals other than the applicant. That clause was claimed 3,238 times in the year under review. Figure 5 compares the use of this clause with all other clauses used since 1994/95, which indicates increasing use of the exemption to protect personal privacy. The next most frequently claimed exemptions were: clause 6, which relates to the deliberative processes of government (168 times); clause 4, which relates to certain commercial or business information of private individuals and organisations (also 168 times); clause 7, which protects from disclosure documents which would be privileged from production in legal proceedings on the ground of

FIGURE 5: Use of Exemption Clauses — All Agencies



legal professional privilege (151 times); and clause 1 which protects Cabinet and Executive Council documents (77 times). The amendment made to the FOI Act in 2004 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 2004/05 to 71 in 2008/09. 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. The exemption clauses claimed most by Ministers were clause 3 (personal information); clause 1 (Cabinet and Executive Council documents); clause 6 (deliberative processes of government); and clause 4 (commercial or business information of private persons).

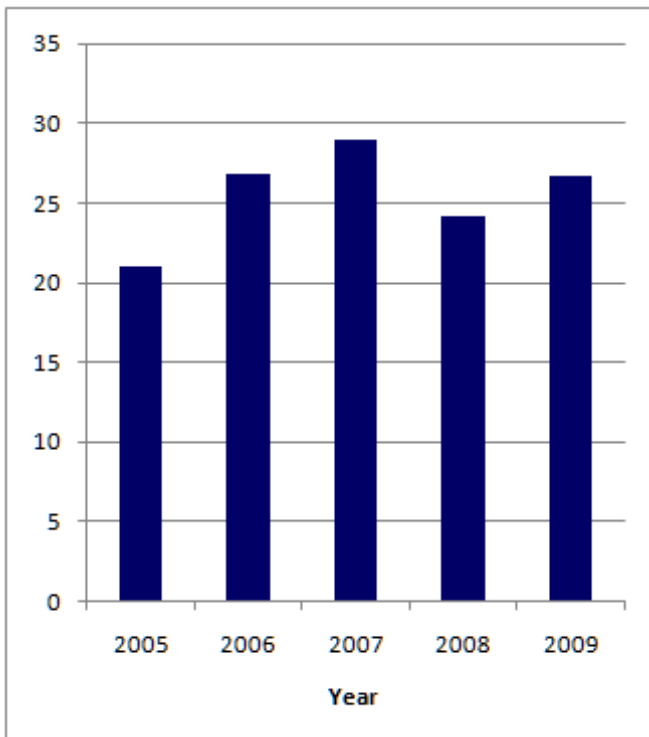
3.4.4 Internal Review

Agencies received 227 applications for internal review of decisions relating to access applications during 2008/09. This represents about 2% of all decisions made and about 25% of decisions made to refuse access. In the year under review, 224 applications for internal review were dealt with. The decision under review was confirmed on 163 occasions, varied on 48 occasions, reversed on 13 occasions and the application for internal review was withdrawn on 4 occasions. Eight applications for amendment of personal information were made to agencies during the year. All eight applications were dealt with, resulting in personal information being amended on two occasions, not amended on three occasions and amended, but not as requested, on three occasions. The four reported applications for internal review of decisions relating to the amendment of personal information resulted in the initial decision being confirmed on three occasions, with one application remaining to be decided.

3.4.5 Average Time

The average time taken by agencies to deal with access applications (27 days) increased by approximately three days from the previous year, but is still well within the maximum period of 45 days permitted by the Act. A chart depicting the average days taken by agencies in dealing with access applications appears below.

FIGURE 6
Average Days — All Agencies



3.4.6 Charges

The average amount of charges imposed by agencies for dealing with access applications increased in comparison with the previous year—by almost \$4.58 per non-personal application. There has been an obvious upward trend over the 3 years from 2006/07 to 2008/09.

FIGURE 7
Average Charge for Access — All Agencies

