

AGENCY PERFORMANCE REPORT ON OPERATIONS

2. AGENCY PERFORMANCE — REPORT ON OPERATIONS

2.1 DECISIONS OF INTEREST 2009/2010

The following section outlines decisions of interest by the Commissioner during the reporting period.

Refusal to deal with a large application

In *Re Ravlich and Attorney General; Minister for Corrective Services* [2009] WAICmr 17, the Commissioner dealt with a complaint from the Hon. Ljiljana Ravlich MLC relating to a decision of the Attorney General; Minister for Corrective Services (the Minister) to refuse to deal with an access application under s.20 of the FOI Act. The application sought access to the Minister's diary, daily itinerary documents and documents detailing the expenditure on the Minister's Ministerial credit card over a 5-6 month period.

Section 20 provides that if - after taking reasonable steps to help the access applicant to change the application to reduce the amount of work required to deal with it - an agency considers that the work involved in dealing with an access application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency can refuse to deal with the application.

After considering the steps taken by the Minister to help the complainant to change the application to reduce the amount of work needed to deal with it; the work involved in dealing with the access application; the usual work of the Minister's office; and the resources devoted to the task of dealing with the application in accordance with the statutory requirements of the FOI Act, the Commissioner decided that the Minister's decision to refuse to deal with the complainant's access application under s.20 was justified in the circumstances.

The Commissioner noted that while s.20 places agencies under a duty to assist applicants, an element of reasonableness must be implied in the

overall process if the legislation is to work satisfactorily. The Commissioner considered that relevant factors in dealing with a s.20 matter include whether an applicant has taken a co-operative approach in redrawing the boundaries of an application.

In determining whether the Minister had taken reasonable steps to assist the complainant to change the application to a manageable level, the Commissioner had regard to the complainant's experience and knowledge of the Act and her experience as a former Minister of the State. The Commissioner also noted that if a similar application were made to the Minister by a member of the public unfamiliar with the work involved in dealing with it, the Commissioner's view as to the degree of assistance required from the Minister in order to satisfy his obligation under s.20 might be different.

Transfer of applications and searches for electronic documents

In *Re MacTiernan and Minister for Regional Development* [2009] WAICmr 29, the complainant applied to the Minister for Regional Development for access to all documents relating to the formula for grant allocations for the Country Local Government Fund. The Minister's office transferred the application to the Department of Local Government and Regional Development under s.15 of the FOI Act on the basis that the Minister held no documents of that description. However, the complainant obtained information to contradict that view and applied to the Commissioner for external review of the Minister's decision.

In the course of dealing with that matter, it became clear that the Minister's officer and not the Minister himself had made the decision to transfer the application. In his decision the Commissioner noted that, in cases where the relevant agency – as here – is a Minister, s.100 of the FOI Act requires the Minister, and not

members of the Minister's staff, to make decisions under the Act, including a decision to transfer an application to another agency.

Re MacTiernan also highlighted the need for staff to make effective searches for electronic documents, including using an appropriate range of key words; being trained and conversant with the tools to search electronic systems; and having proper processes in place to capture documents in the electronic recordkeeping system, in order to ensure the proper functioning of the FOI Act.

Valuation reports

Under clause 6 of Schedule 1 to the FOI Act, information is exempt from disclosure if it would reveal an agency's deliberative processes, provided it is established that disclosure of the information would, on balance, be contrary to the public interest.

In *Re McKay and McKay and Water Corporation* [2009] WAICmr 35, the Commissioner reviewed a decision made by the Water Corporation (the agency) to refuse the complainants access to valuation information contained in two valuation reports that the agency had obtained in respect of land owned by the complainants under clause 6(1). The agency was seeking to purchase a portion of the complainants' land by negotiated agreement to enable the construction of a pipeline. Under the *Land Administration Act 1997*, the agency has the power to acquire land for public works by compulsory acquisition, where negotiation efforts fail.

The Commissioner accepted that the valuation information was obtained as part of the agency's deliberations to determine the value of the land and the range of prices the agency was willing to pay for it. In dealing with clause 6(1), the Commissioner was also required to decide whether disclosure of that information would, on balance, be contrary to the public interest.

The Commissioner recognised a public interest in the agency carrying out negotiations to acquire

land by agreed purchase without the risk of those negotiations being undermined by the disclosure of sensitive information. However, in the circumstances of the case, the Commissioner was not persuaded that the disclosure of the valuation information was reasonably likely to damage negotiations between the parties either at present or in future, as those negotiations had effectively broken down and because the valuation information was out of date.

The Commissioner observed that where government agencies seek to acquire land from private citizens, transparency in the acquisition process serves to achieve the objects of the FOI Act. Those objects include making the persons and bodies that are responsible for State and local government more accountable to the public (s.3(1)(b)). The Commissioner recognised a strong public interest in agencies, which possess extraordinary powers and resources in respect of the acquisition of property that are not available to private citizens, being seen to act fairly and transparently.

After weighing up the competing public interests for and against disclosure, the Commissioner was not persuaded that disclosure of the valuation information would be contrary to the public interest. The Commissioner decided that the valuation information was not exempt under clause 6(1) and set aside the agency's decision to refuse access to it.

This decision was the subject of an appeal by the agency under s.85 of the FOI Act to the Supreme Court¹. The appeal was heard on 17 June 2010. As at the end of the reporting period, the Court had not delivered its judgment².

¹ Section 85(1) provides that an appeal lies to the Supreme Court on any question of law arising out of any decision of the Commissioner on a complaint relating to an access application.

² The Court delivered its judgment on 17 August 2010, confirming the Commissioner's decision. The judgment can be found at <http://www.foi.wa.gov.au>

Disclosure of personal information

Under clause 3 of Schedule 1 to the FOI Act, personal information about an individual is exempt from disclosure, subject to a number of limitations, including a consideration of whether disclosure would, on balance, be in the public interest.

Re U and Department of Health [2010] WAICmr 3 is one of the rare decisions in which the Commissioner has held that, on balance, it was in the public interest to disclose personal information about one individual to another. In this case, the complainant sought medical information relating to his deceased wife who had been under the clinical care of certain health service agencies at the time of her death. The relevant document was the Chief Psychiatrist's review into the clinical care of the deceased up to the time of her death. The agency had disclosed an edited copy of that review to the complainant which revealed, in effect, only the recommendations arising from the conduct of the review.

In considering the public interest, the Commissioner took into account the following facts:

- ❖ the complainant was the deceased's closest relative, next of kin and carer of the children of the marriage;
- ❖ other close members of the deceased's family supported the access application;
- ❖ a good deal of information about the deceased's medical condition and treatment had already been disclosed to the complainant; and
- ❖ the deceased had in the past indicated a level of consent to the disclosure of information about her health and treatment to her husband (the complainant).

Although the Commissioner recognised that there was a strong public interest in protecting the privacy of an individual (including a deceased person) and a public interest in preserving the trust and confidence of the public in the confidentiality of health records, there is a public interest in informed public debate about the operations of public health services, especially when - as here - there are concerns about whether they have operated effectively. The Commissioner considered that, on balance, the public interests in disclosure outweighed those favouring non-disclosure in this case. Accordingly, the Commissioner decided that the relevant information was not exempt under clause 3.

Documents held by Ministers

Re Ravlich and Attorney General [2010] WAICmr 5 provides some guidance on the application of clause 4(2) of the Glossary to the FOI Act, which sets out what documents held by Ministers are potentially accessible under the FOI Act.

In effect, that provision states:

- (a) that the requested documents must be in the possession or under the control of the Minister in his or her official capacity;
- (b) in addition, those documents must relate to the affairs of another government agency (except where that agency is another Minister); and
- (c) (a) and (b) include documents that the Minister is entitled to access and documents held by Ministerial staff in their capacity as Ministerial staff, but does not include documents of an agency for which the Minister is responsible.

Consequently, the following documents will not be accessible under the FOI Act from a Minister, even if they are held by that Minister:

- ❖ documents held by Ministers or their staff in a non-official capacity;
- ❖ documents held by Ministers in their official capacity but which do not relate to the affairs of another government agency;

- ❖ documents held by Ministers in their official capacity which relate only to the affairs of another Minister; and
- ❖ documents which are documents of an agency for which the Minister is responsible.

2.2 EXTERNAL REVIEW

2.2.1 External Review Applications and Other Applications

A total of 144 applications, composed of 125 complaints (including 16 informal/invalid complaints) and 19 other kinds of applications under the Act were received in 2009/2010. Table 1 shows the kinds of applications received and Table 2 the applicant and respondent groups.

TABLE 1: APPLICATIONS RECEIVED

APPLICATIONS FOR EXTERNAL REVIEW	No.
Complaints - valid	109
Complaints - informal / invalid	16
Section 66(6) - applications - no internal review	7
Section 66(4) - applications - out of time	6
Section 13(5) - applications for extension of time	4
Section 48(3) - request for destruction certificate	1
Section 35(1) - waiver of requirement to consult	1
TOTAL	144

TABLE 2: BREAKDOWN OF VALID COMPLAINTS

Applicant Group	No.	Respondent	No.
Individual Citizen	60	Department (ex. Police & Health)	30
Member of Parliament	21	Local Government	29
Company	16	Minister	20
Prisoner	8	Board, Committee, Commission	14
NFP Group	3	Health Related	10
Media	1	Police	5
		University	1
TOTAL	109	TOTAL	109

2.2.2 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 s.28 of the Act;
- ❖ impose a charge or require the payment of a deposit; or
- ❖ not to amend personal information or make a notation as requested.

The 16 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 Act.

Table 3 shows a summary of complaints received by agency type.

TABLE 3: COMPLAINTS RECEIVED (BY AGENCY TYPE)

AGENCY TYPE	COMPLAINTS		INFORMAL/INVALID		TOTAL	
	No.	%	No.	%	No.	%
State	60	55.04	14	11.20	74	59.20
Minister	20	18.35	1	0.80	21	16.80
Local	29	26.61	1	0.80	30	24.00
TOTAL	109	87.20	16	12.80	125	100

Table 4 details the number of complaints received in 2009/10 and the agencies concerned.

TABLE 4: COMPLAINTS RECEIVED

AGENCY	COMPLAINTS INVALID	TOTAL	AGENCY	COMPLAINTS INVALID	TOTAL
Agency Unknown	0	1			
Agriculture and Food, Department of	2	0	NMAHS—Sir Charles Gairdner Hospital	1	0
Attorney General, Department of the	1	1	Pathwest Laboratory Medicine WA	1	0
Bassendean, Town of	1	0	Peppermint Grove, Shire of	2	0
Bayswater, City of	1	0	Pharmaceutical Council of Western Australia, The	0	1
Belmont, City of	2	0	Planning, Department of	4	0
Bunbury, City of	1	0	Police, Western Australia	5	2
Canning, City of	3	0	Port Hedland, Town of	2	0
Challenger Institute of Technology	1	0	Port Hedland Port Authority	2	0
Child Protection, Department for	0	1	Premier and Cabinet, Department of the	2	0
Claremont, Town of	1	0	Public Advocate, Office of the	1	0
Cockburn, City of	1	0	Public Sector Standards Commissioner, Office of the	2	0
Commerce, Department of	5	0	SMAHS - Royal Perth Hospital	2	0
Communities, Department for	1	0	SMAHS - Bentley Hospital	2	0
Corrective Services, Department of	2	1	Sport and Recreation, Department of	1	1
Cottesloe, Town of	1	0	Stirling, City of	2	0
Edith Cowan University	1	0	Toodyay, Shire of	1	1
Environment and Conservation, Department of	3	0	Tourism Commission, Western Australian	1	0
Forest Products Commission	1	0	Training and Workforce Development, Department of	1	0
Fremantle, City of	2	0	Treasury and Finance, Department of	2	0
Geraldton-Greenough, City of	1	0	WACHS - Pilbara	1	0
Gingin, Shire of	1	0	WACHS - South West	1	0
Gosnells, City of	1	0	Water Corporation	1	0
Health, Department of	0	2	Workcover Western Australia Authority (Workcover WA)	3	2
Health Review, Office of	1	0	Ministers:		
Joondalup, City of	2	0	Attorney General	1	1
Kalamunda, Shire of	1	0	Energy, Minister for	3	0
Legal Aid Western Australia	1	0	Environment, Minister for	1	0
Legal Practice Board of WA, The	1	0	Health, Minister for	2	0
Local Government, Department of	2	0	Planning, Minister for	2	0
Main Roads Western Australia	2	0	Police, Minister for	1	0
Medical Board of Western Australia	1	1	Regional Development and Lands, Minister for	1	0
Mines and Petroleum, Department of	1	0	Training, Minister for	1	0
Murray, Shire of	2	0	Transport, Minister for	2	0
Nedlands, City of	1	0	Treasurer	5	0
NMAHS - Graylands Selby-Lemnos and Special Care Health Services	0	1	Water, Minister for	1	0
NMAHS - Mental Health	1	0			
			TOTAL	109	16
					125

2.2.3 Other Applications

Other applications received fell into the following categories:

- ❖ applicants or third parties seeking to lodge complaints out of time pursuant to s.66(4) of the Act, or without internal review pursuant to s.66(6);
- ❖ agencies seeking waiver of the requirement to consult with third parties when processing an application pursuant to s.35(1);
- ❖ agencies seeking an extension of the permitted period of 45 days within which an

agency must deal with an application (s.13(5)); and

- ❖ agencies seeking certification to obliterate or remove information or to destroy a document pursuant to s.48(3).

Nineteen “other” applications were received in 2009/10, compared with 24 received in the previous reporting period. Table 5 gives a detailed breakdown of these applications and the agencies concerned.

TABLE 5: OTHER APPLICATIONS RECEIVED

AGENCY	OUT OF TIME s.66(4)	NO INTERNAL REVIEW s.66(6)	WAIVER OF REQUIREMENT TO CONSULT s.35(1)	EXTENSION OF TIME s.13(5)	REQUEST FOR DESTRUCTION CERTIFICATE s.48(3)	T O T A L
Bassendean, Town of				1		1
Belmont, City of	1					1
Child Protection, Department for			1			1
Commerce, Department of				1		1
Corrective Services, Department of		1				1
Forestry, Minister for	1					1
Gosnells, City of					1	1
Health, Department of		1				1
Housing, Department of				2		2
Insurance Commission of Western Australia		1				1
Legal Practice Board of Western Australia, The		1				1
Nedlands, City of		1				1
Planning, Department of		1				1
Public Sector Standards Commissioner, Office of the		1				1
Regional Development; Lands, Minister for	4					4
TOTAL	6	7	1	4	1	19

2.2.4 External Review Outcomes

A total of 143 applications, made up of 123 complaints (including 17 informal/invalid complaints) and 20 other applications were finalised during the year. Table 6 gives details of the types of applications dealt with in the 2009/10 reporting period.

TABLE 6: APPLICATIONS DEALT WITH

TYPE OF APPLICATION	No.
Complaints - valid	106
Complaints - informal / invalid	17
Section 66(4) - out of time	7
Section 66(6) - no internal review	7
Section 13(5) - application for extension of time	4
Section 35(1) - application for waiver of requirement to consult	1
Section 48(3) - request for destruction certificate	1
TOTAL	143

Table 7 shows a summary of the outcomes of complaints finalised during the year, by agency category.

TABLE 7: OUTCOME OF COMPLAINTS FINALISED (BY AGENCY CATEGORY)

AGENCY TYPE	CONCILATED		PUBLISHED DECISION		DECLINED		TOTAL	
	No.	%	No.	%	No.	%	No.	%
State	25	48.07	24	46.15	3	5.77	52	49.06
Minister	21	63.63	12	36.36	0	0.00	33	31.13
Local	13	61.90	7	33.33	1	4.76	21	19.81
Total	59	55.66	43	40.56	4	3.77	106	100.00

Note: Table 7 excludes Informal/Invalid complaints

TABLE 8: 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		
Claremont, Town of		1				1
Cockburn, City of	1			1		2
Commerce, Department of	1		1			2
Corrective Services, Department of		3	1			4
Cottesloe, Town of		1				1
C&AHS - Princess Margaret Hospital for Children		1				1
Edith Cowan University				1		1
Education and Training, Department of	2	1				3
Environment and Conservation, Department of	3	1			1	5
Fire and Emergency Services Authority of Western Australia	1					1
Fisheries, Department of	1					1
Fremantle, City of	2					2
Geraldton-Greenough, City of		1				1
Gingin, Shire of	1					1
Gosnells, City of	1					1
Health, Department of				1		1
Health Review, Office of			1			1
Joondalup, City of	3					3
Kalamunda, Shire of		1				1
Legal Aid Western Australia	1					1
Main Roads Western Australia		1				1
Medical Radiation Technologists Registration Board of Western Australia	1					1
NMAHS - Mental Health		1				1
NMAHS - Sir Charles Gairdner Hospital	1					1
Peppermint Grove, Shire of	1	1				2
Perth, City of	1		1			2
Planning, Department of *	3				1	4
Police, Western Australia **	2	1				3
Port Hedland, Town of	1					1
Premier and Cabinet, Department of the	1	2				3

* Includes agency previously known as Department of Planning and Infrastructure

** Includes agency previously known as Police Force of Western Australia

TABLE 8: 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		
SMAHS - Bentley Hospital	2					2
SMAHS - Royal Perth Hospital	2		1			3
Stirling, City of	2					2
Subiaco Redevelopment Authority				1		1
Swan, City of					1	1
Tourism Commission, Western Australian	1					1
Treasury and Finance, Department of	1	1				2
WACHS - Pilbara	1					1
WACHS - South West			1			1
Water Corporation	1	2		1		4
Workcover Western Australia Authority (Workcover WA)		1			1	2
Sub-Total Agencies:	38	20	6	5	4	73
Ministers:						
Attorney General	1	1	1			3
Minister for Child Protection	1					1
Minister for Education	4	1				5
Minister for Energy	2	1				3
Minister for Environment	1					1
Minister for Health	2	1				3
Minister for Indigenous Affairs	1					1
Minister for Mines and Petroleum	1	1				2
Minister for Police			1			1
Minister for Regional Development; Lands	2	3				5
Minister for Transport	1					1
Treasurer	4	1				5
Minister for Water	1	1				2
Sub-Total Ministers:	21	10	2	0	0	33
Progressive-Total Complaints:	59	30	8	5	4	106
Informal / Invalid Complaints						
Agency Unknown					1	1
Attorney General					1	1
Attorney General, Department of the					1	1
Child Protection, Department for					1	1
Corrective Services, Department of					1	1

TABLE 8: 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		
Fisheries, Department of					1	1
Health, Department of					2	2
Medical Board of Western Australia					1	1
NMAHS - Graylands Selby-Lemnos and Special Care Health Services					1	1
Pharmaceutical Council of Western Australia, The					1	1
Police, Western Australia *					2	2
Sport and Recreation, Department of					1	1
Toodyay, Shire of					1	1
Workcover Western Australia Authority (Workcover WA)					2	2
Sub-Total Informal/Invalid:					17	17
TOTAL	59	30	8	5	21	123

Note: The Information Commissioner does not deal with a complaint if it is outside his jurisdiction and may not deal with it if it is frivolous, vexatious, misconceived or lacking in substance (s.67 of the Act). Table 8 includes Informal/Invalid complaints. Four of the five complaints declined related to formal complaints and the remaining 1 related to an informal/invalid complaint.

* Includes agency previously known as Police Force of Western Australia

TABLE 9: PUBLISHED DECISIONS

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0152009	"L"	Department of Corrective Services	12/08/2009
D0162009	"M"	Child and Adolescent Health Service	13/08/2009
D0172009	Ravlich	Attorney General; Minister for Corrective Services	14/08/2009
D0182009	McClue	Department of Corrective Services	17/08/2009
D0192009	Dann	Department of Corrective Services	25/08/2009
D0202009	West	Department of Treasury and Finance	27/08/2009
D0212009	"N"	Royal Perth Hospital	28/08/2009
D0222009	"P"	Department of Environment and Conservation	1/09/2009
D0232009	City of Subiaco	Subiaco Redevelopment Authority	3/09/2009
D0242009	Guest	Main Roads Western Australia	15/09/2009
D0252009	West	Department of Education and Training	21/09/2009

TABLE 9: PUBLISHED DECISIONS (cont...)

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0262009	“Q”	City of Cockburn and “R”	23/09/2009
D0272009	Wilson	Shire of Kalamunda	14/10/2009
D0282009	Salmon	Town of Cottesloe	30/10/2009
D0292009	MacTiernan	Minister for Regional Development	30/10/2009
D0302009	“S”	Water Corporation	16/11/2009
D0312009	Mallet	Edith Cowan University	26/11/2009
D0322009	Mallet	City of Perth	26/11/2009
D0332009	Michel	Office of Health Review	22/12/2009
D0342009	“T”	City of Geraldton-Greenough	29/12/2009
D0352009	McKay	Water Corporation	30/12/2009
D0362009	Cox	Town of Claremont	31/12/2009
D0012010	Kolo	Water Corporation	13/01/2010
D0022010	MacTiernan	Department of the Premier and Cabinet	21/01/2010
D0032010	“U”	Department of Health	28/01/2010
D0042010	Ravlich	Minister for Police	28/01/2010
D0052010	Ravlich	Attorney General	29/01/2010
D0062010	Ravlich	Minister for Education	26/02/2010
D0072010	“V”	Department of the Premier and Cabinet	23/03/2010
D0082010	Ravlich	Treasurer	24/03/2010
D0092010	Ravlich	Minister for Regional Development; Lands; Minister Assisting the Minister for Transport; Minister Assisting the Minister for State Development	30/03/2010
D0102010	Ravlich	Minister for Energy; Training and Workforce Development	30/03/2010
D0112010	Ravlich	Deputy Premier; Minister for Health; Indigenous Affairs	30/03/2010
D0122010	Courtney	Western Australia Police	31/03/2010
D0132010	Stasinowsky	Department of Corrective Services	09/04/2010
D0142010	“W”	North Metropolitan Health Service	30/04/2010
D0152010	Cherian	Shire of Peppermint Grove	30/04/2010
D0162010	Ravlich	Minister for Water; Mental Health	14/05/2010
D0172010	Ravlich	Minister for Regional Development; Lands; Minister Assisting the Minister for Transport; Minister Assisting the Minister for State Development	21/05/2010
D0182010	Wallace	Workcover Western Australia Authority (Workcover WA)	25/05/2010
D0192010	Ravlich	Minister for Mines; Petroleum; Fisheries; Electoral Affairs	28/05/2010
D0202010	Roberts	WA Country Health Service - South West	02/06/2010
D0212010	Carroll	Department of Commerce	16/06/2010

2.2.5 Other Applications

There were 20 other applications finalised this year. They were applications to make a complaint out of time (s.66(4)); where internal review had not been applied for or completed (s.66(6)); applications for waiver of the requirement to consult third parties (s.35(1)); applications for an extension of the permitted time for an agency to deal with an access application (s.13(5)); and requests for destruction certificates (s.48(3)). These, together with the outcomes, are shown in Table 10.

TABLE 10: OUTCOME OF OTHER APPLICATIONS FINALISED

AGENCY	NO INTERNAL REVIEW s.66(6)		OUT OF TIME s.66(4)		EXTENSION OF TIME S.13(5)		WAIVER OF REQUIREMENT TO CONSULT s.35(1)	REQUEST FOR DESTRUCTION CERTIFICATE s.48(3)	TOTAL MATTERS FINALISED
	A	R	A	R	A	C	R	R	
Bassendean, Town of						1			1
Belmont, City of			1						1
Child Protection, Department for							1		1
Child Protection, Minister for				1					1
Commerce, Department of						1			1
Corrective Services, Department of		1							1
Forestry, Minister for				1					1
Gosnells, City of								1	1
Health, Department of		1							1
Housing, Department of					2				2
Insurance Commission of Western Australia		1							1
Legal Practice Board of WA, The		1							1
Nedlands, City of	1								1
Planning, Department of		1							1
Public Sector Standards Commissioner, Office of the		1							1
Regional Development; Lands, Minister for				4					4
TOTAL	1	6	1	6	2	2	1	1	20

Key: A-Approved; C-Conciliated; R-Refused

2.3 ADVICE AND AWARENESS

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

All members of the OIC contribute to 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 Act;
- ❖ provision of advice and assistance to members of the public on the procedure for exercising their rights under the Act;
- ❖ visits to country regions;
- ❖ briefings to community groups;
- ❖ production of articles providing advice and guidance on the workings of the 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 OIC.

Training Courses and Briefings

The OIC is proactive in raising awareness and understanding of the procedures and processes prescribed by the Act. Apart from requests

received for training or assistance, public sector needs are identified from a survey of agencies. Due to staff turnover, there is a periodic need for new agency staff to be briefed on the FOI process and agencies' 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 OIC provides speakers in response to invitations from organisations 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 OIC are shown in Table 11.

FOI Coordinator Workshops

Workshops are scheduled based on the level of demand and are conducted by the OIC at no charge to agencies. Eight full-day FOI Coordinators' workshops were held during the year in metropolitan and regional areas. The course introduces participants to the FOI legislation and the requirements which must be observed when dealing with an FOI 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 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 the OIC 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 arising from collocation with other accountability agencies is that we were able to host the majority of the FOI Coordinators' workshops in 2009/10 at our own premises. Feedback from participants who attended the workshops was very positive.

43 officers from local government agencies attended the workshops and 134 from State government agencies (including Ministers' offices).

Decision-makers' Forums

The half-day decision-makers' forum assists staff in agencies, including senior managers, to act as 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; refusing to deal with an application; considering exemptions; applying the public interest test; preparing a notice of decision that complies with the Act; understanding the internal and external review processes; and making decisions. Attendees also establish contact with staff of the OIC who may be contacted for advice in the future, which is especially useful for those agencies that do not receive many applications. Three Decision-makers' forums were conducted in 2009/10, attended by a total of 47 officers of State government agencies (including Ministers' offices) and 6 officers of local government agencies.



Accountability agencies visit Mandurah in November 2009

Left to Right: Sandra Pelham, Investigation Officer, Commonwealth Ombudsman; Chris Field, Western Australian Ombudsman; Sven Bluemmel, Information Commissioner

Regional Awareness Program:

- ❖ *Geraldton 30 June – 2 July 2009*
- ❖ *Mandurah 10 – 11 November 2009*
- ❖ *Kimberley Region – Broome/Kununurra 3 – 6 May 2010*
- ❖ *Southwest Western Australia 17 – 18 May 2010*

Regional visits offer the opportunity to raise public and agency awareness of FOI procedures and processes to improve decision-making and meet officers of State and local government agencies.

As part of the Regional Awareness Program, the OIC visited Geraldton, Mandurah, Broome, Kununurra and Augusta-Margaret River, together with other key accountability agencies. Seminars were held for community groups, members of the public and regionally-based public sector agencies. The OIC delivered a number of workshops and briefings explaining the process and procedures that apply when dealing with applications for documents held by State or local government agencies.

Comprehensive briefing sessions were presented to staff at Geraldton Health Campus and Peel Health Campus. A briefing session was also presented to staff at Broome Hospital with video-link to Derby and Kununurra Hospitals. The briefings included clarification of personal information, third party consultation, notices of decision and the review process. The briefings were informal and interactive, allowing for clarification of any points raised.

Two FOI awareness raising sessions were held for staff of the Shire of Broome, followed by a comprehensive FOI training session for officers of the Shire and other government agencies.

The OIC also visited the Kimberley Development Commission in Kununurra which hosted a training session for government officers.

Two FOI briefing sessions were conducted for the officers of the Shire of Augusta-Margaret River. A FOI Coordinators' workshop for Shire officers including those from neighbouring shires was hosted and held at the Shire of Augusta-Margaret River.

TABLE 11: ATTENDEES AT PRESENTATIONS

TRAINING SESSIONS (No.)	STATE GOVERNMENT	LOCAL GOVERNMENT	MINISTERIAL STAFF	TOTAL
FOI Coordinators Workshops (7)	126	43	8	177
Decision Makers Forums (3)	45	6	2	53
			Sub-total	230
BRIEFINGS (No.)				TOTAL
Agencies (16)				390
Public (3)				84
			Sub-total	474
GRAND TOTAL OF ATTENDEES				704

TABLE 12: FORMAL TRAINING AND PRESENTATIONS

DATE	PRESENTATION STYLE	AUDIENCE
1 July 2009	FOI Briefing	Geraldton Hospital
1 July 2009	FOI Briefing	Officers from State and local government agencies
30 July 2009	FOI Coordinators' Workshop	Officers from State and local government agencies
12 August 2009	FOI Coordinators' Workshop	Officers from State and local government agencies
9 September 2009	Decision-makers' Forum	Officers from State and local government agencies
18 September 2009	FOI Briefing	Ministers' Chiefs of Staff
7 October 2009	FOI Coordinators' Workshop	Officers from State and local government agencies
27 October 2009	FOI Briefing	Department of Water
6 November 2009	FOI Coordinators' Workshop	Officers from State and local government agencies
10 November 2009	FOI Briefing	City of Rockingham
10 November 2009	FOI Briefing	Mandurah Community Groups
11 November 2009	FOI Briefing	Peel Health Campus
11 November 2009	FOI Briefing	Officers from State and local government agencies - Mandurah
17 February 2010	Decision-makers' Forum	Officers from State and local government agencies
3 March 2010	FOI Coordinators' Workshop	Officers from State and local government agencies
9 April 2010	FOI Coordinators' Workshop	Officers from State and local government agencies
16 April 2010	FOI Briefing	Office of Energy
20 April 2010	FOI Briefing	Murdoch University
22 April 2010	FOI Briefing	Department of Commerce
28 April 2010	FOI Briefing	Edith Cowan University
3 May 2010	FOI Briefing	Officers from State and local government agencies - Broome
3 May 2010	FOI Briefing	Kimberley Health Region
4 May 2010	FOI Briefing	Shire of Broome - Officers from State and local government agencies
4 May 2010	FOI Briefing	Shire of Broome
4 May 2010	FOI Briefing	Broome Community Groups
6 May 2010	FOI Briefing	Kimberley Development Commission
12 May 2010	Decision-makers' Forum	Officers from State and local government agencies
17 May 2010	FOI Briefing x 2	Shire of Augusta-Margaret River
18 May 2010	FOI Coordinators' Workshop	Officers from local government agencies - Shire of Augusta-Margaret River
8 June 2010	FOI Briefing	Officers from State and local government agencies
16 June 2010	FOI Coordinators' Workshop	Officers from State and local government agencies

Web Site and Electronic Communications

The OIC web site (www.foi.wa.gov.au) contains extensive information about the FOI process. It is structured into sections including: *About FOI?* which provides assistance with the objects of the Act including *Frequently Asked Questions (FAQs)*, guides to the *FOI process* and some of the most frequently cited exemption clauses; *Publications* which contains links to the Act and Regulations, annual reports, brochures and articles giving guidance on the FOI process; and *Decisions* which contains copies of all formal decisions made on complaints, including links to appeal decisions of the Supreme Court.

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; by section of the Act; or by catchword. This is a valuable resource for agencies and members of the public who may be researching the interpretation given to particular exemptions and sections of the Act. Such ready access to precedents contributes to a higher level of understanding and application of the legislation by decision-makers.

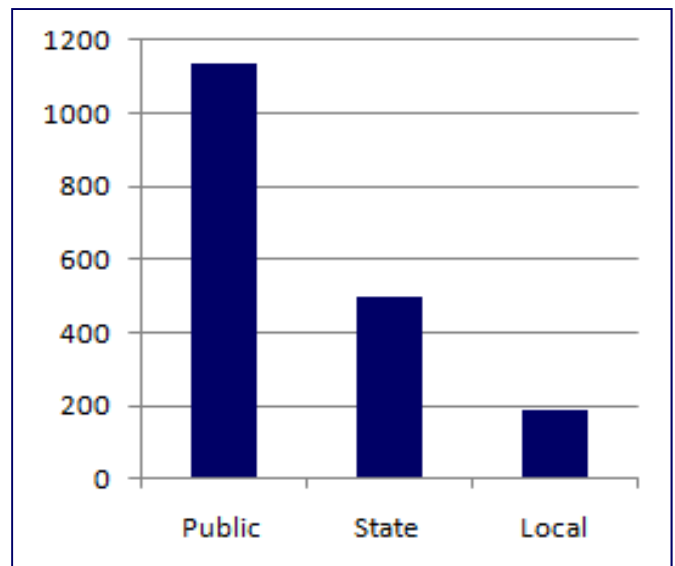
The section entitled *Training* contains the latest news and training information available and a facility to register for training courses. The *Miscellaneous* section provides ancillary information, such as our contact details and feedback facilities. There are also links to other related web sites.

The web site received a much-needed makeover during 2009/10. The new look also makes provision for easier accessibility in line with WA government website governance requirements.

Telephone Enquiries

There were 1,823 telephone enquiries received during the year (1,765 in 2008/09). Over 62% (1,137) of telephone enquiries received (60% in 2008/09) 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 was from officers of State government (27%-496) and local government (10%-190) agencies seeking assistance in dealing with access applications or advice regarding other statutory obligations under the Act.

Figure 1



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

Sixty five 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 Western Australia Police

(20) and the Department of Corrective Services (15). 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 Act. In some cases, where the enquiry was from an applicant, enquiries were also made with the agency concerned to ascertain the status of the application to assist the office in responding helpfully to the applicant and, if necessary, advice was also given to the agency in those cases.

Table 13 shows a summary of applications that were mistakenly directed to the OIC instead of to the agency holding the documents.

Of the remaining written enquiries, 179 were requests for advice concerning applications made under the FOI Act and a further 31 dealt with written advice dealing with other matters.

TABLE 13: MISDIRECTED APPLICATIONS RECEIVED

Year	Corrections	Police	Other	Total
2005/2006	22	23	17	62
2006/2007	16	35	40	91
2007/2008	15	24	33	72
2008/2009	15	33	25	73
2009/2010	15	20	30	65

2.4 ADMINISTRATION

The Commissioner's statutory function under the Act necessitates the delivery of a range of services to the public, agencies and Parliament, including:

- ❖ complaint resolution;
- ❖ giving advice about the 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 WA country callers;
- ❖ a web site located 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 OIC 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 OIC.

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