



WESTERN AUSTRALIA

Office of the **Information Commissioner**

ANNUAL REPORT

2011/2012

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Office of the Information Commissioner

DEAR MR PRESIDENT
DEAR MR SPEAKER

ANNUAL REPORT 2011-2012

In accordance with the provisions of the *Financial Management Act 2006* and the *Freedom of Information Act 1992*, I submit my report for the year ended 30 June 2012 which has been prepared in compliance with the provisions and reporting requirements of both Acts.

A handwritten signature in blue ink, appearing to read 'S. Bluemmel', written over a light blue horizontal line.

Sven Bluemmel
INFORMATION COMMISSIONER

27 September 2012

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1 OVERVIEW

1.1 Commissioner's foreword



The past year has been one of significant change for the Office of the Information Commissioner. As part of the Government Office Accommodation Master Plan, the office has relocated to Albert Facey

House in Perth. Being co-located with other integrity agencies allows for the efficient sharing of high quality resources, including training and meeting facilities.

Being located in Albert Facey House also encourages greater dialogue between my office and other Integrity agencies located in the building, including the offices of the Auditor General and the Ombudsman. The heads of those agencies, together with the Public Sector Commissioner and the Corruption and Crime Commissioner, constitute the Integrity Coordinating Group, or ICG. This group aims to promote policy coherence and operational coordination in the ongoing work of Western Australia's core public sector integrity institutions. Being co-located with several of those agencies will help to achieve those aims.

Additional resources allocated to the office in the 2011 State Budget became available during the year, which allowed me to hire two additional staff to help address the backlog of complaints about agency decisions under the *Freedom of Information Act 1992* (the 'FOI Act'). I expect that the positive effect on office productivity will become fully apparent from next financial year.

During the year, the Supreme Court delivered its judgment on appeal against my decision to require the disclosure of documents relating to facilities on Varanus Island, which was the site of a gas pipeline explosion on 3 June 2008. In *Apache Northwest Pty Ltd v Department of Mines and Petroleum [No 2]* [2011] WASC 283, his Honour Justice Edelman upheld the decision and provided important guidance on the interpretation of various exemptions under the FOI Act as well as the process which the Act lays down for the Information Commissioner to follow when undertaking reviews of agencies' FOI decisions.

An area which continues to cause confusion is the rights of third parties. Under the FOI Act, an agency is obliged to seek the views of third parties before giving access to documents which contain

personal, commercial or business information about them. If the agency has already formed the view that the relevant information is exempt from disclosure, then consultation is not necessary and may cause unnecessary confusion and delay. On the other hand, if the agency does consult, having formed the view that the information is not exempt from disclosure, the third party does not have a right of veto over its disclosure. After obtaining the third party's views, the agency must make its own decision whether the information is in fact exempt under the FOI Act, even if the third party objects.

A final point to remember is that making decisions under the FOI Act has a direct and very real impact on people's rights. Decision makers at all levels play a crucial role in dispensing justice. In doing so, they must not only act in accordance with the specific legislative provisions of the FOI Act, but must do so in a way which is consistent with the FOI Act's objects of allowing more effective public participation in government and making government more accountable to the public.

Sven Bluemmel
Information Commissioner

1.2 Operational structure

The office of Information Commissioner is established by s.55(1) of the *Freedom of Information Act 1992* (the Act) and the occupant is directly accountable to Parliament for the performance of the functions prescribed by the Act. The Information Commissioner is independent of executive government and reports directly to the Parliament and not to, or through, a Government Minister. The Attorney General is the Minister responsible for the administration of the Act, but has no specific role under the legislation.

The Commissioner is supported by staff in the Office of the Information Commissioner (OIC). The main function of the OIC is to provide independent external review of agencies' decisions by dealing with complaints about decisions made by agencies under the Act.

Other responsibilities prescribed by the Act include:

- ❖ ensuring that agencies are aware of their responsibilities under the Act [s.63(2)(d)];
- ❖ ensuring members of the public are aware of the Act and their rights under it [s.63(2)(e)];
- ❖ providing assistance to members of the public and agencies on matters relevant to the Act [s.63(2)(f)]; and
- ❖ recommending to Parliament legislative or administrative changes that could be made to help the objects of the Act be achieved [s.111(4)].

The Commissioner has a statutory duty to undertake these functions and the OIC 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 OIC:

- ❖ 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

1.3 Performance management framework

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

This outcome contributes to the Government goals of financial and economic responsibility, outcomes based service delivery and social and environmental responsibility.

The OIC 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 Act.