



WESTERN AUSTRALIA

Office of the **Information Commissioner**

# ANNUAL REPORT 2012/2013

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### 2.1 Resolution of complaints (External Review)

As outlined under s.65(1) of the Act, an applicant has the right to make an external review application to the Information Commissioner 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 amend personal information or make a notation as requested.

During 2012/2013, as shown in Table 1 on page 66, 129 of these applications for external review (i.e. complaints) were received by the OIC (a 13% increase from the previous year) and 119 were finalised.

In addition to these requests, the Information Commissioner received, and finalised, 16 other applications under the Act, as follows.

- ❖ s.66(4) - request to lodge an external review application out of time: three of these requests were received and four decided. Of these four, one was conciliated and two were refused. The Information Commissioner has the discretionary power to accept applications out of time, but each application is considered on its merits and generally only in exceptional circumstances will it be accepted.
- ❖ s.66(6) - request for external review without first applying for an internal review: Six of these applications were received during the year, five of which were refused, the other withdrawn by the applicant. Again, the Information Commissioner considers the reasons for the applicant making a request to circumvent the internal review process, and can allow it in exceptional circumstances.
- ❖ s.13(5) - request (by an agency) for an extension of time to deal with an

access application: Two of these applications were received and decided – both were refused. The Information Commissioner will always expect an agency to have previously requested an extension of time from the applicant before considering granting an extension.

- ❖ s.35(1) - request (by an agency) to waive the requirement to consult with third parties when processing an access application: Five were received and of these two were conciliated, two refused and one allowed.

Finally, 25 applications regarded as informal or invalid were received during the year. These include general complaints about the manner in which an agency has processed or dealt with a 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). If the complaint is invalid, the Information Commissioner may refer the issue to the Advice and Awareness section for follow-up with the agency, but the matter cannot be dealt with as an external review.

Further breakdown of the types of applications received and dealt with and the

agencies involved can be found in tables 2 - 7 in the appendix.

### Decisions of Interest 2012/2013

The following section outlines some particular decisions by the Information Commissioner during the reporting period which may be of broader interest. In particular, some of the matters demonstrate the increasing complexity of the documents agencies are required to deal with under the FOI Act. They also show how the boundaries have shifted in the time since the FOI Act commenced 20 years ago from the traditional understanding of a document being paper based to electronic documents, emails, databases and CCTV footage.

### Definition of an agency

In *Re Pisano and Health Solutions (WA) Pty Ltd trading as Peel Health Campus* [2012] WAICmr 24, the complainant applied to Health Solutions (WA) Pty Ltd trading as Peel Health Campus ('PHC') under the FOI Act for access to a document sent by a senior clinician to staff at Peel Health Campus. PHC refused to deal with the application and the complainant applied to the Information Commissioner for external review of that decision.

On external review, the Commissioner had to decide whether or not the PHC is an agency as defined in the FOI Act. If it is not an agency under the FOI Act, the complainant had no right of access to the requested document under the FOI Act and PHC was entitled to refuse to deal with the access application.

After careful consideration the Commissioner upheld PHC's decision and found that the PHC is not a public body or office, as defined in the FOI Act, and therefore not an agency under the FOI Act. In particular, the Commissioner was not satisfied that the PHC is a body or office that is established for a public purpose under a written law, as required by paragraph (e) of the definition of 'public body or office'. The Commissioner noted that PHC had an agreement with the government which included a requirement that PHC have a policy permitting access by public patients to their personal information. However, that obligation did not extend to documents of the kind to which the complainant sought access in this case. In any event, any access under such a policy would be separate to access rights under the FOI Act.

### Building plans

The applicant in *'R' and City of Greater Geraldton and 'S'* [2012] WAICmr 25 sought access to the building plans of the private residence of their neighbour. The building plans sought were limited to two drawings regarding only the external features and elevations of the property. The agency refused access to those documents under clause 3(1) of Schedule 1 to the FOI Act as they contained personal information.

In the particular circumstances of this case, the Commissioner considered that the personal information that would be revealed by the disclosure of the documents - an address; the name of an individual; and the size and certain external features of the building on the property - was not information of a particularly private or sensitive nature nor that its disclosure would involve any real intrusion on the personal privacy of the third party.

The Commissioner considered that the accountability of government agencies includes informing the public, where possible, of the basis for decision-making and the material considered relevant to that process. In this case, the complainant and the third party had been in a long running

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neighbourhood dispute and the Commissioner considered that there was a public interest in both parties being kept fully informed. The Commissioner was also of the view that there are public interests in private individuals who have dealings with government agencies maintaining trust in those agencies and being – and being seen to have been – fairly dealt with.

On the information before him, the Commissioner was not persuaded that the public interest in the third party's privacy overrides other public interests in this case. In balancing the competing public interests, the Commissioner considered that those favouring disclosure outweighed those favouring non-disclosure. Consequently, the Commissioner found that the documents were not exempt under clause 3.

During the external review process, the third party also claimed that the documents were exempt under clause 5(1)(f) of Schedule 1 to the FOI Act, which provides that matter is exempt if its disclosure could reasonably be expected to endanger the security of a property. Having examined the documents, the Commissioner noted that they showed windows and doors but there was nothing to indicate their strength or material or the internal layout of the

property. The Commissioner considered that knowing the placement of doors and windows, without more, could not reasonably be expected to endanger the security of the property and found that the documents were not exempt under clause 5(1)(f). The Commissioner also found that, as the documents were subject to copyright belonging to a person other than the State, access should be given by way of inspection only, pursuant to s.27(2)(c) of the FOI Act.

### **Public interest in disclosure of documents relating to the investigation of a death**

In August 2008, Kieran Watmore passed away at Albany Regional Hospital ('the ARH'). The State Coroner conducted an inquest into the incident and his report, dated 30 September 2009, is a public document. Kieran Watmore's family subsequently received a public apology in Parliament from the Minister for Health, who said *"Kieran should not have died when he did, there were a number of systemic deficiencies that led to his death and these cannot be ignored"* and noted that the Department of Health would implement all of the Coroner's recommendations.

Kieran Watmore's father applied under the FOI Act to the WA Country Health Service – Great Southern ('the agency') for documents containing the findings of an internal investigation by the ARH into his son's death; the complaint from the ARH to the Nurses and Midwives Board of Western Australia (now the Australian Health Practitioner Regulation Agency) in relation to the nursing staff responsible for his son's care at the time of the incident; and the decision of the Department of Health or the ARH not to renew the employment contract of a particular staff member.

The agency refused access to the requested documents – without identifying any of them - under clauses 3(1) and 8(2) of Schedule 1 to the FOI Act which relate, respectively, to personal information and confidential communications.

Mr Watmore applied to the Information Commissioner for external review of the agency's decision. During the external review process, the agency identified four documents within the scope of the complainant's application and subsequently gave Mr Watmore access to two of them. The agency withdrew its claim for exemption under clause 8(2) for the other two documents but claimed they were subject to qualified privilege under section

124Y of the *Health Insurance Act 1973* (Cth). The Acting Information Commissioner ultimately found that the agency's claim of qualified privilege was not made out. However, she considered whether those two documents were exempt under clause 3(1) of Schedule 1 to the FOI Act.

In the circumstances of the case, the A/Commissioner considered that disclosure of the documents would further the public interests in government transparency and accountability by contributing to an understanding of the events surrounding Kieran Watmore's death and the ensuing investigations. Consequently, apart from a small amount of information, the A/Commissioner decided that disclosure of the documents would, on balance, be in the public interest and found that they were not exempt under clause 3: *Re Watmore and WA Country Health Service – Great Southern* [2012] WAICmr 29.

### Documents of an agency

Under the FOI Act, the right of access to documents is created by section 10 of the Act and is a right of access to "documents of an agency (other than an exempt agency)" subject to and in accordance with the provisions of the FOI Act.

In *Re Ninan and Department of Commerce* [2012] WAICmr 31, the Commissioner was required to determine whether certain valuations and reports are 'documents of an agency' as defined in the FOI Act. Pursuant to section 23(1)(b) of the FOI Act, an agency may refuse access to a document if it is not a document of the agency, which is in effect what the agency did in this case.

The complainants accepted that the agency did not have physical possession of the requested valuations and reports. However, they contended that if an access applicant applies to the agency for valuations and reports that are held not by the agency but by private individuals or organisations, then the agency should obtain those documents pursuant to its powers under section 69 of the *Fair Trading Act 2010* ('the FT Act'), and give access to them pursuant to the FOI Act. Under s.69 of the FT Act an authorised person within the agency has the power, for the purposes of an investigation or inquiry, to require any person to produce any document relevant to the investigation or inquiry.

The Commissioner considered that the requested valuations and reports could only be under the control of the agency (and therefore 'documents of an agency') if the agency has a present legal entitlement to

control the use or physical possession of those documents. The Commissioner was of the view that the power to require the production of documents under section 69 of the FT Act does not give the agency a present legal entitlement to obtain possession of those documents for the purposes of the FOI Act. If the agency has not taken possession of the documents for the purposes of an investigation or inquiry under section 69, the FOI Act cannot be used to require the agency to take the step of carrying out an investigation or inquiry in order to obtain the documents.

Accordingly, the Commissioner decided that the requested valuations and reports are not documents of the agency within the meaning of clause 4(1) of the Glossary to the FOI Act and confirmed the agency's decision to refuse access to those documents under s.23(1)(b) of the FOI Act.

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### Environmental management plan and occupational hygiene management plan

In *Re Pillsbury and Department of Mines and Petroleum and Others* [2013] WAICmr 1, the complainant applied to the agency for access to an environmental management plan and occupational hygiene management plan concerning a demolition project at the Derby Export Facility. After consulting with the two third parties who prepared the requested documents, the agency refused access on the basis that the documents were exempt under clause 4(2) (information of a commercial value) and clause 4(3) (information concerning commercial and business affairs) of Schedule 1 to the FOI Act. The complainant applied to the Commissioner for external review of the agency's decision and the two third parties were joined as parties to the complaint. At that stage, the third parties claimed that the documents were also exempt under clause 8(2) (confidential communications).

During the external review process, the Commissioner informed the parties that he was of the preliminary view that the requested documents were not exempt as claimed by either the agency or the third parties. As a result, the agency withdrew

its exemption claims. However, as the third parties maintained their objection to disclosure, the Commissioner was required to determine the matter by formal published decision.

The Commissioner recognised that private organisations or persons having business dealings with government must necessarily expect greater scrutiny of, and accountability for, those dealings than in respect of their other dealings but should not suffer commercial disadvantage because of them. However, on the information before him, the Commissioner was not persuaded that disclosure of the requested documents could reasonably be expected to give the third parties' competitors a commercial advantage nor that an independent buyer would pay to obtain the information in the documents as the third parties claimed. On the evidence provided, the Commissioner was not satisfied that the requested documents had a commercial value to either of the third parties or that their disclosure could reasonably be expected to destroy or diminish any commercial value in the information in the documents. Consequently, the Commissioner found that the documents were not exempt under clause 4(2). The Commissioner was also

not persuaded by the third parties' claim that disclosure of the documents could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency, in light of the apparent statutory requirement to provide the information in the requested documents. In the absence of material to establish that disclosure of the requested documents could reasonably be expected to have an adverse effect on the commercial or business affairs of the third parties, the Commissioner found that the requested documents were not exempt under clause 4(3).

In relation to the third parties' claim that the documents were exempt under clause 8(2), the Commissioner accepted that the information in the documents may have been of a confidential nature because it was not in the public domain and appeared to be only known to a small number of people. However, the Commissioner was not satisfied that the documents were obtained in confidence as required by clause 8(2)(a) and noted the agency's advice that there was no evidence that the documents were given to or received by the agency on a confidential basis. Further, as the Commissioner did not consider that disclosure of the documents could

reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency, the requirements of clause 8(2)(b) were not established. Accordingly, the Commissioner found that the documents were not exempt under clause 8(2).

The other issue that arose in this matter related to the manner in which access could be given to the requested documents. Under s.27 of the FOI Act, if giving an applicant a copy of a document would involve an infringement of copyright belonging to a person other than the State, access may be given by way of inspection only. In this case, the Commissioner was satisfied that the requested documents were subject to copyright and decided that access should be given by way of inspection only.

### **CCTV footage**

The complainant in *Re Flahive and City of Stirling* [2013] WAICmr 7 was involved in an incident at a recreational facility ('the facility') operated by the City of Stirling ('the agency'). On the day of the incident Western Australia Police ('WAPOL') officers attended the facility and viewed CCTV footage related to the incident. Certain CCTV footage related to the incident was

downloaded and provided to WAPOL officers on a DVD.

The complainant applied to the agency for access to CCTV footage from the facility car park and reception area for a specified period on the day of the incident ('the requested footage'). The applicant did not pay the \$30 fee that is payable under the FOI Act for applications for non-personal information (which this application was) until more than two months after making his application. The agency transferred the application in full to WAPOL under section 15(1) of the FOI Act<sup>1</sup> and the complainant applied to the Commissioner for review of the agency's decision to transfer the application.

The Commissioner considered that the agency's decision to transfer the access application to WAPOL implied that the agency had conducted searches for the requested footage and that it had decided it did not hold them. Consequently, the Commissioner dealt with the complaint as a review of a deemed decision of the agency to refuse the complainant access to the requested footage under section 26 of the

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<sup>1</sup> WAPOL's decision following the transfer of the application was also the subject of external review by the Information Commissioner – see *Re Flahive and Western Australia Police* [2013] WAICmr 6

FOI Act. Section 26 provides that an agency may refuse access to a document if the agency is satisfied that all reasonable steps have been taken to find the document and the document cannot be found or does not exist. The Commissioner noted that CCTV footage is a document for the purposes of the FOI Act.

In this case, on the date the complainant paid the required application fee, the requested footage had been automatically overwritten and no longer existed. The Commissioner expressed concern that the agency had not taken steps to protect the requested footage once it was aware of the complainant's intention to make an access application. He also expressed the view that the agency should have given the complainant more timely written advice that his application was invalid (because he had not paid the required \$30 fee) and the consequence of not making a valid application would be that the CCTV footage may be automatically overwritten after 30 days. The Commissioner also expressed concern that the agency had failed to make a record of the CCTV footage given to WAPOL. However, the Commissioner noted that the agency had subsequently instituted policies and procedures that

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would limit the potential for similar problems to occur in the future.

Although the Commissioner expressed concern about the process followed by the agency, he ultimately found that the agency had taken all reasonable steps to find the requested footage but that it could not be found or does not exist. Consequently, the Commissioner confirmed the agency's decision to refuse access to the requested footage pursuant to section 26 of the FOI Act.

### Access to database available outside the FOI Act

Section 6 of the FOI Act provides that the access rights in the FOI Act do not apply to documents that are already available. In *Re Terrestrial Ecosystems and Department of Environment and Conservation* [2013] WAICmr 9, the Commissioner considered whether the requested document in that case – the relevant parts of a database – was available to the public, for purchase or free distribution, such that under s.6 of the FOI Act, the access rights in the FOI Act did not apply.

The Commissioner noted that section 6 is explicitly concerned with documents, not information, and did not accept the agency's submission that s.6(a) applies to

information. Therefore, the Commissioner considered that for s.6(a) to apply in this case, the requested document must be available to the public for purchase or free distribution. The Commissioner was of the view that the requested document is available for 'free distribution' to the public if that document is given out at no cost to the public.

Ultimately, the Commissioner found that the requested document, apart from certain exempt matter, was available for free distribution to the public because members of the public could access the database through an online portal. In this case, the online portal was not a separate database, but a tool or system to access a number of different databases, one of which was the requested document.

The complainant did not dispute that the requested document could be downloaded from the online portal. Rather, the complainant submitted that it was not easily accessible, because it could not be downloaded all at once, but required downloading in stages. However, the Commissioner noted that section 6 of the FOI Act is not concerned with difficulty or unreasonableness of access.

### Cut-off date for documents within scope of an access application

In *Re Georgeson and Government Employees Superannuation Board* [2013] WAICmr 10, the parties disputed the time frame of the documents sought in the complainant's access application. In particular, the matter raised the question of the precise 'cut-off date' for determining which documents were covered by the terms of the complainant's access application, which was framed in terms of seeking access to "all documents...to the present date".

The Commissioner considered that it is clear from the provisions of the FOI Act that an access application only applies to existing documents and not to documents that may come into existence at some time in the future.

The Commissioner noted that past decisions of his predecessors have considered that, depending on the circumstances of the particular application, an access application may apply to documents of an agency which come into existence after the date of the access application, but before the date of the agency's decision: see *Re Brown and Police Force of Western Australia* [1995]



WAICmr 22 at [13]-[18] and *Re Musulin and Potato Market Corporation of Western Australia and Others* [2001] WAICmr 26 at [19]-[21].

The Commissioner considered that the circumstances of the present case were distinguishable from *Re Musulin* and *Re Brown* because those cases concerned only two to three documents that came into existence a short time after the access application was lodged and hence it was considered reasonable to take those documents into account. However, the Commissioner considered that the positions in *Re Musulin* and *Re Brown* should not be followed in the circumstances of the present case, having regard to the number of documents and time involved in dealing with the application if the 'cut-off date' was extended beyond the date the application was received.

The Commissioner also considered relevant and persuasive two recent decisions of the Commonwealth Administrative Appeals Tribunal, which determined that a request made under the Commonwealth *Freedom of Information Act 1982* is limited to documents in the possession of the agency on the day the request is received (*Radar Investments Pty Ltd and Health Insurance Commission*

[2004] AATA 166 and *Lobo and Department of Immigration and Citizenship* [2010] AATA 583).

After reviewing the terms of the complainant's application, the Commissioner decided that the agency was required to consider her request only in relation to documents that were in existence at the time the agency received the request.

### 2.2 Advice and awareness

The Advice and Awareness team provides members of the public and agencies with assistance in exercising their respective rights and obligations under the Act. Many potential disputes are resolved informally with the assistance of the OIC.

The OIC also encourages agencies to develop, promulgate and implement policies and procedures dealing with information disclosure. Such policies can make a positive contribution to achieving the objects of the FOI Act.

All members of the OIC contribute to the advice and awareness function, including through assisting in the delivery of training courses, workshops, briefings, responding to queries and maintenance of statistical data to assist in reporting to Parliament.

### 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 in agencies, 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. Briefings are tailored in each case to meet the needs of applicants or agencies.

The Legal Practice Board of Western Australia recognises the OIC as a QA Provider for the purposes of the *Legal Profession Rules 2009*. Accordingly, legal

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practitioners may claim CPD points for attendance at training provided by the OIC as outlined on the OIC website.

A summary of training courses and briefings delivered during the reporting period is shown in Table 8 on page 77. A summary of attendees at these events is shown in Table 9 on page 78.

### FOI coordinators workshops

The OIC delivers intensive workshops to agencies at no charge. Seven full-day FOI coordinators workshops were delivered for agencies in metropolitan and regional areas during the year. The workshops introduce 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 subsequently 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 co-location with other accountability agencies is that OIC was able to host the majority of the FOI coordinators workshops in 2012/13 at its own premises. Feedback from participants who attended the workshops was very positive.

### 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 FOI applications or requests for internal review. It covers the options available to agencies when responding to large applications; assisting an applicant to re-define the scope of an 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 a relationship 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 2012/13.

### Regional awareness and accessibility program

Regional visits offer the opportunity to raise public and agency awareness of FOI procedures and processes to improve decision-making and to meet officers of State and local government agencies. Face-to-face meetings give regional officers the opportunity to raise issues and the Information Commissioner and staff to provide clarification and advice about the requirements of the FOI Act.

As part of the Regional Awareness Program, the OIC visited the Pilbara, Bunbury and Geraldton 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.

The visit to the Pilbara in August 2012 included comprehensive presentations to a number of agencies including the Dampier Port Authority, local governments in the Pilbara and local community groups. The OIC also provided a briefing session to

Nickol Bay Hospital. This was also presented to staff of the Western Australian Country Health Service, Pilbara region via video-link. Video-conferencing is an effective and efficient way to deliver an interactive FOI briefing session to a number of officers at country hospitals and remote area health services.

OIC conducted a comprehensive FOI briefing session for officers of the Shire of York in February 2013.

In March 2013, OIC visited Bunbury and provided seminars to State and local government agencies in the region, including Bunbury Regional Hospital.

In May 2013 the OIC conducted FOI briefing sessions for officers of Midwest Health Services – Geraldton and the City of Greater Geraldton. This followed on from a joint presentation by members of the Integrity Coordinating Group, including the Information Commissioner, for State and local government agencies in the Midwest Region.

The Regional Awareness and Accessibility Program will continue into next year with a visit to Kununurra planned for November 2013. This will include seminars for community groups, members of the public

and regionally-based public sector agencies from State and local government.

### Web site and electronic communications

The OIC web site ([www.foi.wa.gov.au](http://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 patronage of the web site increased slightly when compared with previous years. There was an average of 11,669 separate visits (10,337 in previous year) per month recorded. The average number of web pages viewed per visit increased steadily over the course of the year from 2.93 pages in July 2012 (and 2.32 pages in August 2012) increasing to 4.79 pages in June 2013. Visitors were more prevalent in the earlier months of the year with more than 13,000 visitors in July and August 2012, dropping to an average of 11,000 visitors for the period from December 2012 through to June 2013. Visitors were recorded as having spent an average of 6.5 minutes per visit compared with an average of approximately 7 minutes per visit in 2011/12. The page most frequented, apart from the home page, was that listing the

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2012/13 decisions published by the Information Commissioner. A list of publications added to the web site during the course of the year is provided below:

- Guideline for agencies when producing documents to the Information Commissioner
- Guideline for calculating time and days under the FOI Act.
- Guideline for agencies when consulting with third parties during external review.

### Telephone enquiries

There were 1,150 telephone enquiries received during the year (1,401 in 2011/12). Over 62% of telephone enquiries received (56% in 2011/12) 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%) and local government (11%) agencies seeking assistance in dealing with access applications or advice regarding other statutory obligations under the Act.

### 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 four days. These matters are separately identified and reported on as part of the *Advice and Awareness* output.

There were 237 written enquiries for advice and assistance received and dealt with during the year. The written enquiries were received by letter and by email. 29 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. The agencies the subject of the greatest number of misdirected applications were: the Western Australia Police (12); the Department for Child Protection (4); and the Department of Corrective Services (4).

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 10 on page 79 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, 200 were requests for advice concerning applications made under the FOI Act and a further eight concerned other matters.

### 2.3 Administration

The OIC is not part of the Public Service as defined in Part 3 of the *Public Sector Management Act 1994*. However, to ensure the highest standards in all administrative activities, the OIC endeavours to comply with policies set out for the public sector service whenever this does not compromise the OIC's ability faithfully to discharge its obligations under the FOI Act. The main purpose of the FOI Act is to promote accountability and transparency, and as such the OIC is committed to following whole of government agency policies to facilitate this.

### Code of Conduct and Code of Ethics

The OIC has an established Code of Conduct. This code was reviewed and distributed to staff during the year. The Code is linked to the WA Public Sector Code of Ethics as a general guide to ethical decision-making. Generally, both these guides are complementary to the requirements of the FOI Act, but the FOI Act prevails in the event of any inconsistency.

### Public Sector Standards

Since the return of the recruitment function from Shared Services to agencies in 2011, the OIC has, for the first time, been in full control of its recruitment process. Some reliance had previously been placed on other agencies providing the OIC with corporate services in ensuring compliance with the relevant Public Sector Standards in Human Resources Management, particularly the employment standard. During 2012/13, the OIC has updated its policies to reflect the return of full recruitment functions and ensure that the process is in line with the principles of merit, equity, interest and transparency. Guidelines, forms, policies and checklists have been created to assist in this regard.

### Decommission of Shared Services

In February 2013, the OIC was rolled out of Shared Services. Payroll, human resource services and financial services assistance (including the CFO Assist function) had been provided by Shared Services, all of which were returned to the OIC for management. This was, in essence, a new arrangement for the OIC as prior to Shared Services, the OIC received payroll services and financial services assistance from the Department of the Attorney General. Therefore, this is the first time all services are managed by the OIC.

However, due to the small size of the office, there is no scope for all functions to be managed in-house. The OIC has contracted an external organisation through the Common Use Agreement list to provide a similar service as the Shared Services CFO Assist unit. In addition, the OIC agreed with several other smaller agencies to 'cluster' for the purposes of payroll services.

In light of these changes, all human resource and finance policies required updating, which was completed in June. In addition, work has commenced on drafting a human resource procedures manual and a finance procedures manual which will

incorporate all the OIC's policies, and provide staff with a comprehensive 'how to' guide.

### Records Management

As part of the review of the OIC's record keeping plan in 2009, the commitment was made to review record keeping practices and develop performance indicators. A survey was subsequently provided to all staff on the record keeping system of the OIC, with very positive results, but with some room for improvement. The performance indicators were drafted and recommendations on improvement to the record keeping practices of the office were made. All these results were reflected in a report prepared in 2012/13.