



WESTERN AUSTRALIA

Office of the **Information Commissioner**

ANNUAL REPORT

2013/2014

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Office of the Information Commissioner

DEAR MR PRESIDENT
DEAR MR SPEAKER

ANNUAL REPORT 2013-2014

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 2014 which has been prepared in compliance with the provisions and reporting requirements of both Acts.

A handwritten signature in blue ink, appearing to read 'Sven Bluemmel'.

Sven Bluemmel
INFORMATION COMMISSIONER

25 September 2014

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Milestones of FOI

Sweden 1766 (the first freedom of information legislation)

The first paragraph of “His Majesty’s Gracious Ordinance Relating to Freedom of Writing and of the Press”:

That, having considered the great advances that flow to the public from a lawful freedom of writing and of the press, and whereas an unrestricted mutual enlightenment in various useful subjects not only promotes the development and dissemination of sciences and useful crafts but also offers greater opportunities to each of Our loyal subjects to gain improved knowledge and appreciation of a wisely ordered system of government; while this freedom should also be regarded as one of the best means of improving morality and promoting obedience to the laws, when abuses and illegalities are revealed to the public through the press; We have graciously decided that the regulations issued previously on this matter

require such appropriate amendment and improvement that all ambiguity, as well as any such coerciveness as is incompatible with their intended purpose, may be removed.

Western Australia 1991

Minister for Justice, David Smith, introducing the WA FOI Bill:

Freedom of Information legislation represents a fundamental reform of the relationship between the State and local governments and the communities they serve. It enshrines in legislation rights which are at the very heart of democratic processes.

November 2013

20th anniversary of FOI in WA



Above: Celebrating 20 years of FOI

Below: Sven Bluemmel, Information Commissioner with David Smith, former Minister for Justice.



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Overview

1. Why do we have an FOI Act?

Without access to government information, citizens become mere spectators of, rather than informed participants in, the democratic process. The *Freedom of Information Act 1992* (**the FOI Act**) gives everyone a legally enforceable right to government information.

The objects of the FOI Act are to enable the public to participate more effectively in governing the State and to make the persons and bodies that are responsible for State and local government more accountable to the public. The FOI Act achieves this by creating a general right of access to documents; providing a means to ensure personal information is accurate, complete, up to date and not misleading; and requiring that certain documents concerning State and local government operations be made available to the public. Dealing with requests under the FOI Act is not merely an administrative process but is a means of dispensing justice to the people of Western Australia.

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

The FOI Act is supported by the *Freedom of Information Regulations 1993*.

How does it work?

Anyone has the right lodge a freedom of information (**FOI**) application to WA State and local government agencies and Ministers (collectively referred to as 'agencies'), requesting access to, or copies of, documents, or to apply to have their personal information amended if it is incomplete, inaccurate, out of date or misleading. Agencies are then obliged to make a decision on access or amendment in accordance with the FOI Act.

What is the Office of the Information Commissioner?

The office of Information Commissioner is established by section 55(1) of the FOI Act and the occupant is directly accountable to Parliament for the performance of the functions prescribed by that 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 FOI Act, but has no express role under the legislation.

The Commissioner is supported by 11 full-time equivalent staff (**FTEs**) in the Office of the Information Commissioner (**the OIC**), which is split into two service teams – *Resolution of Complaints (External Review)* and *Advice and Awareness*.

OVERVIEW

Role of the Information Commissioner

The main function of the Commissioner is to provide independent external review of those decisions made by agencies under the FOI Act. This function is carried out by the *Resolution of Complaints (External Review)* team.

In addition, the OIC ensures that agencies and the public are aware of their responsibilities and rights under the FOI Act by providing an advisory and training service, which is undertaken by the *Advice and Awareness* team.

When relevant, the Information Commissioner also recommends legislative or administrative changes that could be made to help the objects of the FOI Act be achieved.

Publications and reference material

In addition to annual reports, the following selected publications and reference materials provide additional background, guidance and information in respect of FOI:

- Complaints procedure guideline ([http://www.foi.wa.gov.au/Materials/Complaints%20Procedure%20\(Feb%202013\).pdf](http://www.foi.wa.gov.au/Materials/Complaints%20Procedure%20(Feb%202013).pdf))
- Conciliation process - guidance note for parties (<http://www.foi.wa.gov.au/materials/Conciliation%20Guidance%20Note.pdf>)
- “The Administration of Freedom of Information in Western Australia: Review by the Information Commissioner 31 August 2010”

(<http://www.foi.wa.gov.au/Materials/FOI%20Review%202010%20-%20Comprehensive%20Report.pdf>)

- Customer service charter (<http://www.foi.wa.gov.au/Materials/CHARTER.pdf>)
- Complaints performance data (<http://www.foi.wa.gov.au/dnn/en-au/publications/performance.aspx>)

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.

2. The year in review



This year marked the 20th anniversary of the FOI Act coming into force and giving the people of Western Australia a legally enforceable right to access government documents. It is easy to take such an important right for granted until one reflects on those societies around the world whose systems of government are characterised by oppression, capriciousness and secrecy.

I believe that all of us who play a role in our system of ensuring transparency and accountability, whether in an agency or the OIC, are indeed privileged to do so. To this end, I would like to thank all the FOI coordinators and decision makers in State and local government upon whom the achievement of the goals of the FOI Act depends. Their job is not an easy one, particularly where the correct decision under the FOI Act is politically or organisationally inconvenient. FOI coordinators and decision makers need to have the courage to make the right decision, which may require them to remind others that they are discharging an important legislative function entrusted to them by Parliament.

While the majority of agencies take their role under the FOI Act seriously, several matters which came before me during the year demonstrated a concerning misunderstanding of the operation of the FOI Act. On one occasion, an agency contacted my office to ask what it should do in response to a particular access application as the agency was “unable to

find an exemption” in the FOI Act to apply to the documents. My office had to remind the agency that unless material falls within one of the exemptions under the FOI Act, it must be disclosed, no matter how inconvenient, sensitive or embarrassing.

On another occasion, an agency indicated to my office that it was not prepared to release a particular document even after my office had reached the conclusion that it is not exempt. The agency’s reason was that a third party had objected to disclosure. While the FOI Act contains mechanisms to ensure that third parties have an opportunity to be heard in such cases, it does not provide third parties with a power of veto over release. Following discussion with my office, the document was released in that case.

I am pleased to say that during the review year, my office finalised a total of 152 external review matters. This is more than in any single year since 1999/2000. This success is due to a greater focus on early case conciliation and general process improvements, all of which have paid significant dividends. These initiatives are described in more detail in this report. I am particularly grateful to all of my staff whose ideas, dedication and hard work have made this happen. The focus on early conciliation and the improved processes have been incorporated into the regular work of OIC and will continue to yield significant benefits.

Sven Bluemmel
Information Commissioner