



**Office of the
Information Commissioner**

Freedom of information for Western Australia

ANNUAL REPORT

2016/2017



Disclosures and Legal Compliance

11. Report on agency statistics

Section 111 of the FOI Act requires that the Commissioner's annual report to the Parliament is to include certain specified information relating to the number and nature of applications dealt with by agencies under the FOI Act during the year. To enable that to occur, agencies are required to provide the Commissioner with the specified information. That information for 2016/17 is set out in detail in the statistical tables in the [Agency Statistics](#) chapter of this report. The following is an overview.

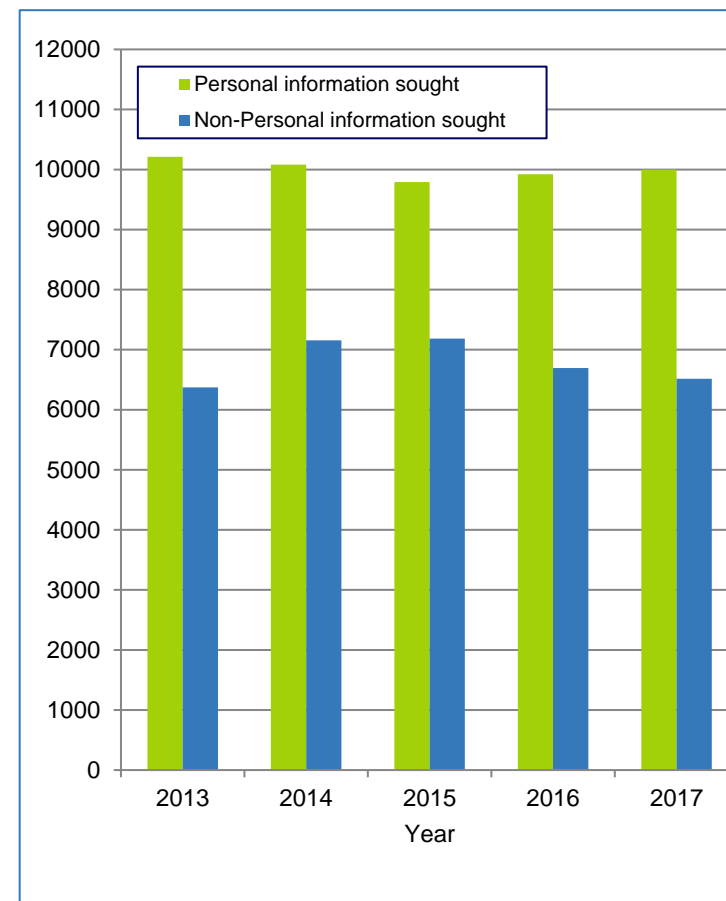
The number of access applications made to agencies under the FOI Act was 17,306 for the year under review. That represents a slight increase from last year (16,969).

Decisions

As can be seen in [Table 14](#), of the decisions on access made by Ministers in the reporting period, 12 were to give full access; 23 were to give access to edited copies of documents; and two decisions were to refuse access. In four cases, no documents could be found.

Table 14 also reveals that 14,775 decisions on access were made by State government agencies (exclusive of local government agencies and Ministers) in 2016/17.

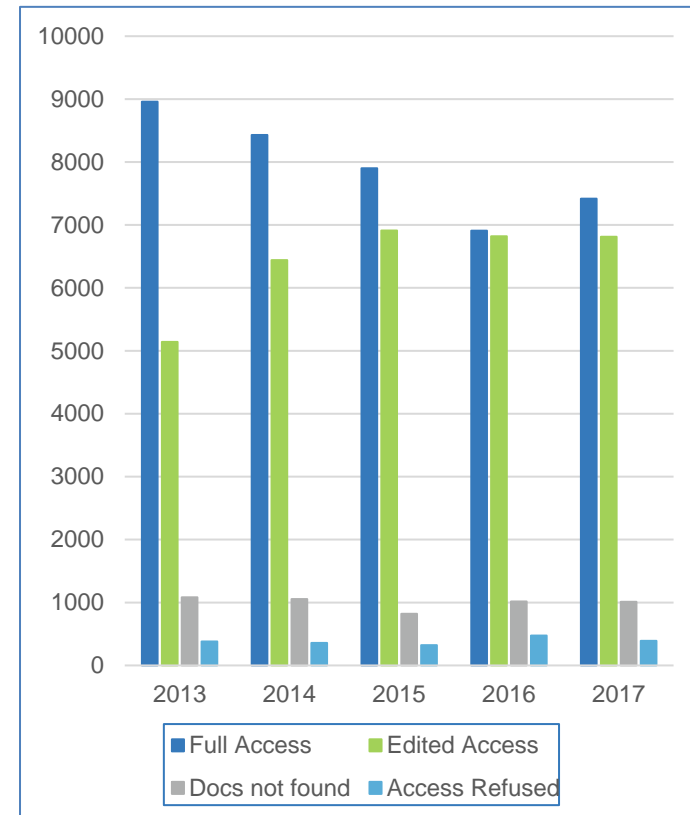
Figure 1
Number of applications decided –all agencies



- 49.2% of decisions (46.3% in 2015/16) resulted in the applicant being given access in full to the documents sought;
- 41.6% (43.0% in 2015/16) resulted in the applicant being given access to edited copies of the documents sought;
- 0.2% (1.0% in 2015/16) resulted in either access being given but deferred, or being given in accordance with section 28 of the FOI Act (by way of a medical practitioner);
- in 6.5% of applications (6.6% in 2015/16) the agency could not find the requested documents; and
- 2.5% of the decisions made (3.0% in 2015/16) were to refuse access.

The above figures indicate that approximately 91.0% of the 14,775 decisions made (90.4% in 2015/16) by State Government agencies on FOI applications were to the effect that access in some form was given.

Figure 2
Outcome of decisions – all agencies



Exemptions

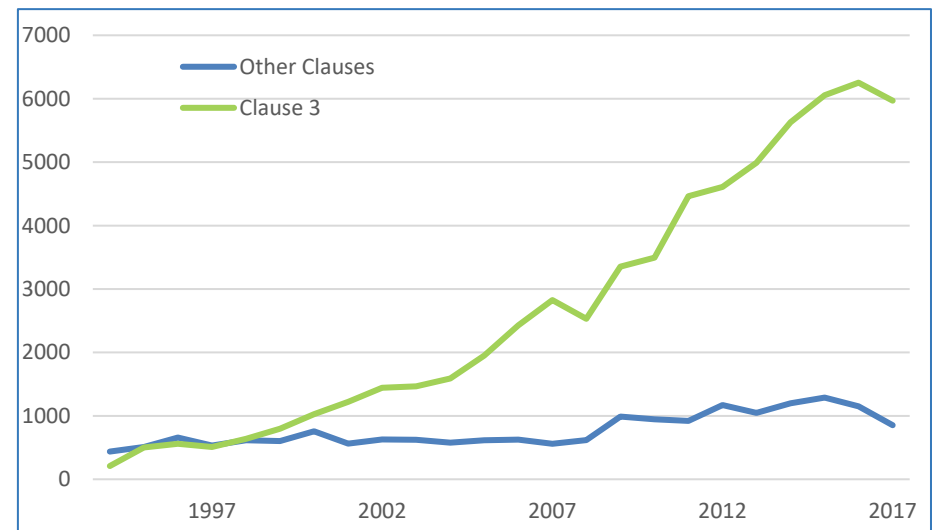
Also consistent with previous years, the exemption clause most frequently claimed by agencies from both State and local government sectors (excepting those claimed by Ministers and described below) was clause 3, which exempts from disclosure personal information about individuals other than the applicant. That clause was claimed 5,969 times in the year under review. Figure 3 compares the use of this clause with all other clauses used since 1993/94, which indicates continued use of the exemption to protect personal privacy.

The next most frequently claimed exemptions were:

- clause 5, which relates to law enforcement, public safety and property security (156 times);
- clause 7, which protects from disclosure documents which would be privileged from production in legal proceedings on the ground of legal professional privilege (128 times);
- clause 4, which relates to certain commercial or business information of private individuals and organisations (122 times);
- clause 8, which protects confidential communications in some circumstances (106 times); and
- clause 14, which relates to information protected by certain statutory provisions.

Consistent with the previous reporting period, the exemption clauses claimed most by Ministers were clause 3 (personal information); clause 12 (contempt of Parliament or court) and clause 1 (Cabinet and Executive Council).

Figure 3 – Use of exemption clauses



Internal review

Agencies received 286 applications for internal review of decisions relating to access applications during 2016/17 (see [Table 16](#)). This represents about 1.9% of all decisions made and about 73% of those decisions in which access was refused. In the year under review, 296 applications for internal review were dealt with (including some that were

received in the previous period). The decision under review was confirmed on 172 occasions, varied on 91 occasions, reversed on eight occasions and the application for internal review was withdrawn on 25 occasions.

Amendment of personal information

Agencies received 23 applications for amendment of personal information during the year (see [Table 17](#)), all of which were dealt with during the year:

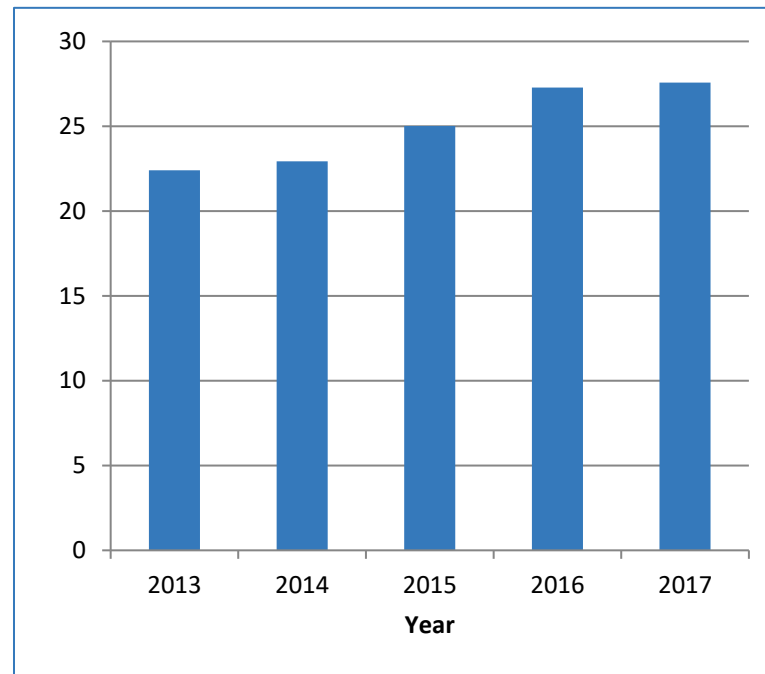
- information was amended on nine occasions;
- not amended on eight occasions;
- amended, but not as requested, on five occasions; and
- one application was withdrawn.

Of the seven applications for internal review of decisions relating to the amendment of personal information dealt with during the year (including some that were received in the previous period), six decisions were made to confirm the original decision and one decision was varied (see [Table 18](#)).

Average time

The average time taken by agencies to deal with access applications (27.57 days) is slightly higher than the previous year (27.28 days) and remains within the maximum period of 45 days permitted by the FOI Act (see Figure 4).

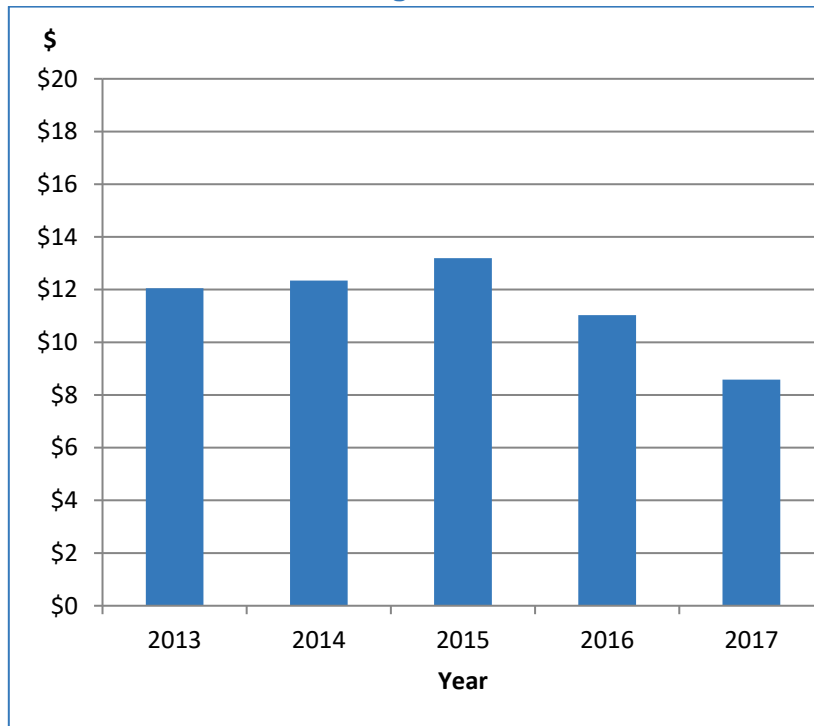
Figure 4
Average days – all agencies



Average charges

The average amount of charges imposed by agencies for dealing with access applications decreased to \$8.58. This is significantly lower than the 2015-16 average charge of \$11.03.

Figure 5
Average charge for access – all agencies



12. Other financial disclosures

- All services provided by the OIC are free of charge. The fees and charges prescribed by the FOI Act for making an FOI application are paid directly to the agency receiving the application.
- The OIC has no capital works projects.
- There were no workers' compensation claims made during the reporting period.

Staff profile

| | 2017 | 2016 |
|-----------------------------------|------|------|
| Full-time permanent | 9 | 9 |
| Full-time contract | 1 | 1 |
| Part-time measured on a FTE basis | 1.4 | 1.4 |

- During the year the OIC offered two consecutive three month secondments to staff of the FOI Unit at the Department of the Premier and Cabinet. One of the operational initiatives of the strategic plan of the OIC is to offer secondment opportunities to experienced FOI officers within the sector, the benefits of which are twofold: providing insight into the external review process that can

be used to benefit the FOI practices of agencies; and to assist my office with its current workload where OIC budget allows.

- Due to an extended period of leave between May and September 2016, the OIC arranged a secondment to cover the Administrative Assistant position.
- Due to the whole of government recruitment freeze in the previous reporting period, two vacant positions were not advertised. Acting arrangements remain in place to cover one of these positions. The other position was abolished and the savings harvested to cover the OIC's contribution to the Agency Expenditure Review. The duties of this position have been transferred to another officer whose normal duties have been allocated to other staff.
- During 2016/17 the first stage of an office structure review was finalised in that an analysis of the duties and tasks currently carried out by staff was conducted. This data will form the basis of the review, and the temporary arrangements outlined in the point above will be formalised as part of this review.

Staff development

- There are six legal officers employed with the OIC who are required to maintain, improve and broaden their legal knowledge, expertise and competence and as their employer, the OIC is obliged to ensure they are given the appropriate opportunities to do so. All legal staff maintain

a Continuing Professional Development (**CPD**) Record as required by the *Legal Profession Rules 2009*.

The OIC has always had a very low rate of staff turnover and it has been recognised that ongoing professional development opportunities (other than for legal officers) can become stagnant, especially for those who have worked here for more than 15 years in the same position. Traditionally, staff have managed their own professional development by seeking the Commissioner's approval to attend training or further education, which would only be denied in very extenuating circumstances. A more structured individual professional development program has been recognised in the OIC's strategic plan as a positive development for the future. A project plan is in development and is scheduled for implementation 2017/18.

- Development of a formal flexible working arrangement policy and office wellness policy is scheduled for 2017/18.

13. Governance disclosures

- No senior officers, or firms of which senior officers are members, or entities in which senior officers have substantial interests, had any interests in existing or proposed contracts with the OIC other than normal contracts of employment service.

- The OIC has no boards or committees, and therefore no remuneration costs in this regard.
- There has been no expenditure on advertising, market research, polling or direct mail.

Conflicts of interest

The OIC maintains a Conflicts of Interest Register. During the reporting period, five potential conflicts were brought to the Commissioner's attention by the officer with the potential conflict. All related to the officer having an external link in some way with either a party to an existing external review matter, or a potential external review matter. The Commissioner confirmed there was no current conflict with four matters and that there was a potential conflict with one matter, which was managed by that officer not being involved in the external review.

Gifts register

The OIC's gifts register is available on our website at <http://foi.wa.gov.au/H004>. Seven gifts were registered during the reporting period: five were accepted and two were declined. Gifts for services provided (predominantly for briefings or speaking engagements) are generally accepted and shared within the office. Gifts that are promoting services or where a discretionary authority exists with the gift recipient (eg purchasing discretion), are declined.

Disability Access and Inclusion Plan

The OIC lodged a progress report to the Disability Services Commissioner in respect of its Plan in June 2017. Fifteen strategies are outlined in the Plan with nine already implemented, as follows:

- Provide a mechanism on the OIC website for people with disability to comment on access to our services, including being able to exercise their rights under the FOI Act.
- Ensure organised events consider accessibility for people with disability.
- Ensure physical access to the OIC's premises is equally available to all persons, regardless of disability.
- Upgrade OIC website to ensure content meets WCAG guidelines.
- Create and disseminate to staff disability access and inclusion policy.
- Ensure requests for public consultations are conducted in a way that will invite and include people with disability.
- Ensure the OIC's current Plan is available for public comment.
- Ensure that recruitment activities are accessible to people with disability.

- Ensure staff with disability are provided with appropriate support to carry out their responsibilities.

One of the outstanding strategies is to arrange training to staff on communicating with people with mental health issues or communication difficulties. A full day Mental Health Communication training course was attended by all staff in July 2017.

The OIC is committed to ensuring that people with disability, their families and carers are able to fully access the range of services and facilities of the office. The OIC will, whenever required, consult with people with disability, their families and carers and disability organisations to ensure that barriers to access and inclusion are addressed appropriately.

The Plan is available on the OIC's website, or copies can be requested from this office.

Compliance with Public Sector Standards and ethical codes

The OIC operates under an established code of conduct that references the WA Code of Ethics. OIC also has an employee grievance resolution policy in place. All new staff are provided with a copy of the Code and grievance policy as part of an induction pack, and these documents are also available to all staff on the OIC's knowledge management system.

Three short term secondments were offered during the reporting period, and no permanent appointments. Improvement to policies and procedures is always encouraged through open discussion and regular reviews.

Occupational health, safety and injury management

The OIC is committed to an occupational safety and health and injury management system which has been established by the OIC for the benefit of all staff. A documented injury management system is in place which is compliant with the *Workers' Compensation and Injury Management Act 1981* and the associated *Workers' Compensation Code of Practice (Injury Management) 2005*. This system has been formally introduced to staff and is made available through the OIC's knowledge management system.

Relevant staff are conversant with occupational health and safety and injury management policies, procedures and programs in order to meet legislative requirements, and are provided the opportunity to report any issues at the monthly staff meetings via a standing agenda item for this purpose. All injury management targets have been met (see Table 12 on Page 96). There were no reported injuries or fatalities, and all managers have attended OSH and injury management training.

Records Management

The OIC's recordkeeping systems were evaluated during the review of the recordkeeping plan in the previous reporting period and considered to be suitable to the size of the office. Areas of improvement were identified in respect of disaster recovery and archiving/disposal. No further progress was made during 2016/17 regarding these issues, but remain on the agenda.

Training in the use of the recordkeeping system is provided as required depending on staff turnover. The system in use is very basic and does not require the use of complex databases.

New staff are provided with a copy of the OIC's Recordkeeping Manual and policy at induction. General staff responsibilities in respect of recordkeeping practices are minimal (other than ensuring they retain relevant records) as the filing protocols are centralised to one officer.