



# Office of the Information Commissioner

*Freedom of information for Western Australia*



## ANNUAL REPORT 2020/21



We acknowledge the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures; and to Elders both past, present and emerging.

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This annual report and previous annual reports are available on the OIC website and are available in other formats on request.



Office of the  
**Information Commissioner**  
*Freedom of information for Western Australia*

16 September 2021

**SPEAKER OF THE LEGISLATIVE ASSEMBLY**

**PRESIDENT OF THE LEGISLATIVE COUNCIL**

#### ANNUAL REPORT TO 30 JUNE 2021

In accordance with section 63 of the *Financial Management Act 2006* I hereby submit my report for the reporting period ended 30 June 2021.

The annual report has been prepared in accordance with the provisions of the *Financial Management Act 2006* and the reporting requirements of the *Freedom of Information Act 1992*.

A handwritten signature in blue ink that reads "Catherine Fletcher".

Catherine Fletcher  
INFORMATION COMMISSIONER

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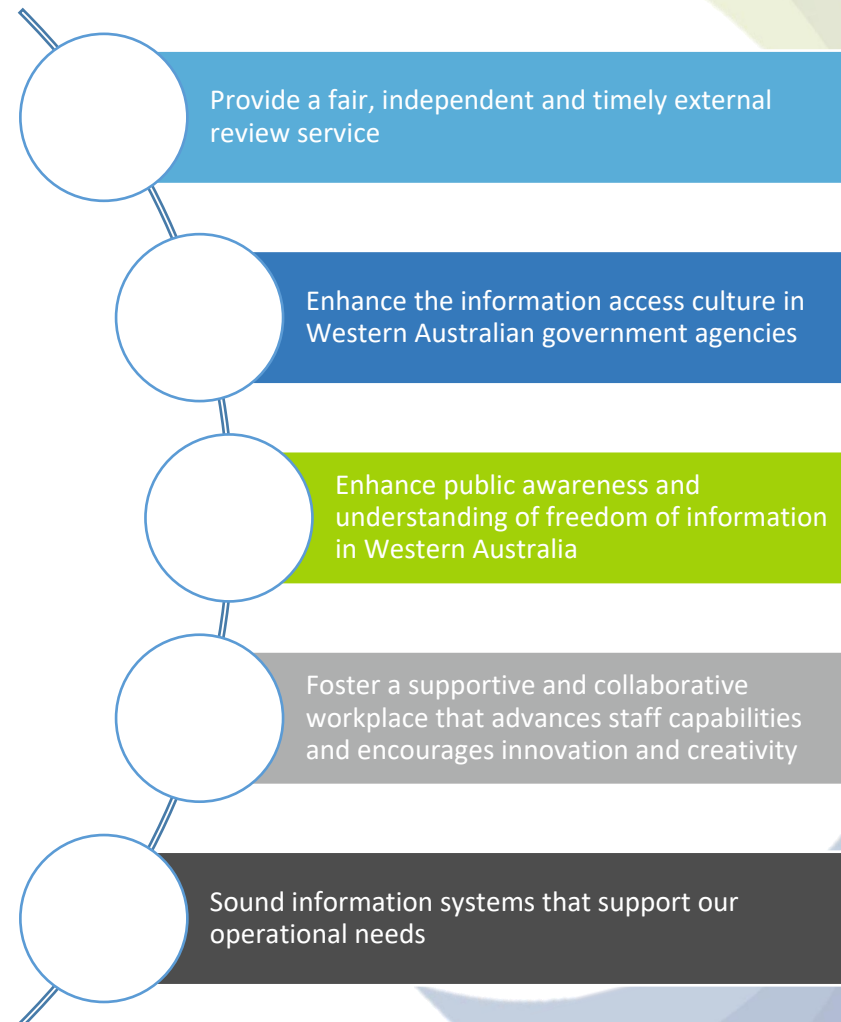
## About this report

Welcome to the Office of the Information Commissioner's 2020/21 annual report.

The aim of this annual report is to give a comprehensive overview of our performance during the year, provide insight into the goals and operations of our office and the operation of the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) in Western Australia. The services we deliver are designed to provide an outcome that gives the people of Western Australia access to documents held by WA State and local government agencies, as required by the law, and to provide a mechanism to ensure their personal information is accurate and up-to-date. In addition, we educate agencies on their responsibilities under freedom of information (**FOI**) legislation and provide assistance to the public to help them understand their rights under FOI legislation.

The key message of FOI legislation mirrors the purpose of agency annual reports – greater accountability and transparency. We trust that this report on our activities and performance during the year provides valuable insight into our operations.

## Strategic goals



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# Overview

## What is Freedom of Information?

A legislative right to access government information remains a hallmark of an open, transparent and accountable democracy. The FOI Act gives everyone a legally enforceable right to government documents in Western Australia.

The stated 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 primarily by creating a general right of access to State and local government documents 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 a means of dispensing justice to the people of Western Australia.

In the absence of State privacy legislation in Western Australia, the FOI Act provides a limited mechanism for the protection of government-held personal information from disclosure under the FOI Act and also provides a means to ensure any such personal information is accurate, complete, up-to-date and not misleading.

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

## How does it work?

Anyone has the right to lodge an FOI application to WA State and local government agencies and Ministers (collectively referred to as 'agencies') requesting access to 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 applications in accordance with the FOI Act.

## Role of the Information Commissioner

The office of Information Commissioner (**the Commissioner**) is created by the FOI Act and is appointed by the Governor. The 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 main function of the Commissioner is to provide independent external review of decisions made by agencies under the FOI Act in respect of applications for access to documents and amendment of personal information. Additional functions include ensuring that agencies and the public are aware of their responsibilities and rights under the FOI Act.

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



## Executive Summary

### Information Commissioner's Report



I am pleased to present to Parliament and the community the 28<sup>th</sup> annual report on the operation of the FOI Act and my office's operations for the 2020/21 reporting period.

Over the past 18 months, with the evolving COVID-19 pandemic across Australia and the world, the importance of timely delivery of transparent and reliable government information and data has become very apparent. It has come to be universally understood as crucial to earning the public's trust and willingness to comply with various policy responses aimed at keeping the community safe and delivering new economic strategies.

The right of access to information in government-held documents is the central plank of most FOI legislation. That right, subject to limited exceptions, has long been recognised as fundamentally important to democracy because it blocks unwarranted and unjustified secrecy by promoting openness and transparency of Government.

My office is an integral part of the FOI system by providing independent review of agency decisions under the FOI Act, and education and advisory services about FOI rights and responsibilities for the community and the public sector.

In support of better access to government information and the promotion of FOI rights, I have had significant involvement

over the last 12 months in the work of the Association of Information Access Commissioners (of Australia and New Zealand) – the AIAC – and the International Conference of Information Commissioners – the ICIC.

My involvement in both the AIAC and the ICIC informs my view as to regional and international best practice concerning access to government information. This helps me to discharge my statutory responsibility to recommend any legislative or administrative changes that could contribute to the objects of the FOI Act being achieved. In keeping with a recommendation made by the Standing Committee on Public Administration in October 2020 that the Attorney General undertake a review of the FOI Act by 2023, my office will soon provide a comprehensive submission supporting such a review to the Attorney General.

The AIAC's *National Dashboard for Utilisation of Information Access Rights (National Metrics)* indicate some interesting trends that compare WA FOI practices to other jurisdictions. In respect of three of the six reported metrics, WA has consistently shown in each period to have the highest rate of use of FOI per capita across all Australian jurisdictions; one of the highest rates of document release, either in full or in part; and the lowest rate of external review by Information Commissioner or Ombudsman.

My office continues to develop resources and deliver training to assist the public sector to understand the obligations and opportunities of providing access to information. In particular this year, eight online learning modules for FOI Coordinators were developed. Going forward, those resources will be supplemented by other online learning modules specifically

aimed at FOI decision-makers. I thank the staff involved for the considerable effort involved in developing these resources, which have the important added benefit of being more widely accessible than the in-person workshops at the OIC offices in the Perth CBD that were previously offered.

Over the next three years my office will be participating in a joint Australian Research Council funded inter-jurisdictional study of FOI culture and administration which will involve a number of WA agencies and individuals involved in the FOI process. The results of this study will inform the future development of OIC training and awareness programs for the public sector.

My staff and I continue to be available upon request for in-person training and information sessions to agencies and community groups. We also maintain a busy advisory service for agencies and the community, providing general information about FOI processes.

Results from the statistics received from agencies this year show there was a 10.7% increase in the number of FOI access applications made compared to the 2019/20 period. The number of FOI access applications received by agencies in the last three years has fluctuated significantly following several years of relative stability: in 2019/20 there was a 4.5% decrease in applications from the previous reporting period, which in itself was an 11.5% increase on the previous reporting period. A considerable proportion of that volatility appears to be in the health sector.

The recent upward trend in FOI access applications made – together with a modest increase in the rate of refusal of

access to documents and a slight decrease in the proportion of agencies making FOI decisions within the statutory time frame – suggests that there is room for improvement in the way the public sector deals with both formal and informal access to information, which will ultimately better serve the public interest in accessing government-held information.

Despite the escalation in applications to agencies over the last 12 months, there was a 3% decrease in the number of valid external review applications made to my office. This small decrease has allowed my office to focus on finalising some older outstanding external reviews. We were able to increase the number of external reviews finalised by 21.6% from last year while maintaining a steady rate of conciliation at 63.9% of all external review matters.

Significantly, in the first full year of operation of the OIC's *Early Intervention Program* that commenced in September 2019, 72.2% of matters actioned within that program were resolved by conciliation as part of the program. However, timeliness for completion of external reviews remains an ongoing concern and a significant area of focus for my office.

Last year my office commenced the implementation of its three year strategic plan for the 2020-2023 period. A new strategic goal was added to ensure the OIC information technology architecture, systems and security will support current operational needs and future initiatives.

This report also outlines a number of collaborative projects across the public sector that my office has been involved in over the last year. As one of the key accountability agencies,

I welcome any opportunity to assist agencies become more transparent through information access.

In conclusion, I wish to acknowledge my dedicated and professional staff and thank them for their ongoing efforts and support for me in my role as the Information Commissioner, and for their service to the Parliament and community of Western Australia.



**Catherine Fletcher**

Information Commissioner

Office of the Information Commissioner (WA)



## 2020/21 highlights



161

*External reviews received*



114

*External reviews resolved by conciliation*



206

*Average age in days of external reviews on hand*



1,140

*Enquiries answered from members of the public*



1,677

*Attendees at OIC briefing, training or education sessions*



180

*External reviews finalised*



100

*External reviews on hand at the end of the period*



12

*Published decisions of the Commissioner*



445

*Enquiries answered from local and State Government*



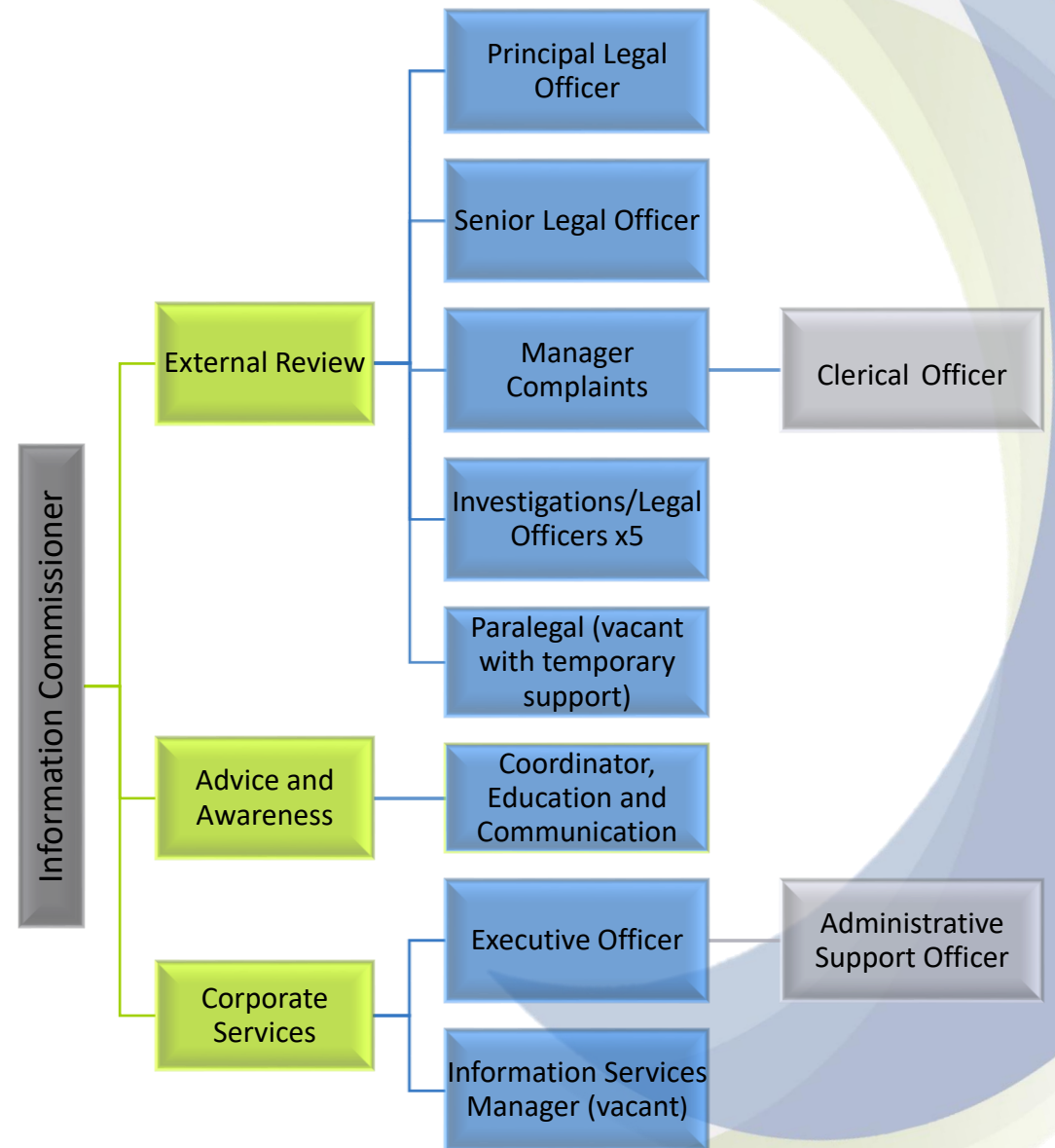
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*New online training modules*

## About the Office of the Information Commissioner

As at 30 June 2021, the Commissioner was supported by 12 staff in the Office of the Information Commissioner (**the OIC**). Three areas operate to assist the Commissioner in meeting the objectives of the FOI Act:

- The *Resolution of Complaints (External Review)* team provide an independent review and resolution process that strives to resolve applications for external review in a timely manner while balancing the competing needs and expectations of applicants, agencies and Parliament within the legislative requirements prescribed by the FOI Act.
- The *Advice and Awareness* team provide objective guidance and information to members of the public and agencies to assist in the proper lodgement and processing of applications under the FOI Act; propose initiatives to enhance efficiency in agency administration when dealing with applications received; and provide briefings and training sessions for agency staff and community organisations.
- *Corporate service* staff provide administrative, executive, information technology and governance support to the Commissioner and staff.



## Performance management framework



Resolution of complaints (external review)

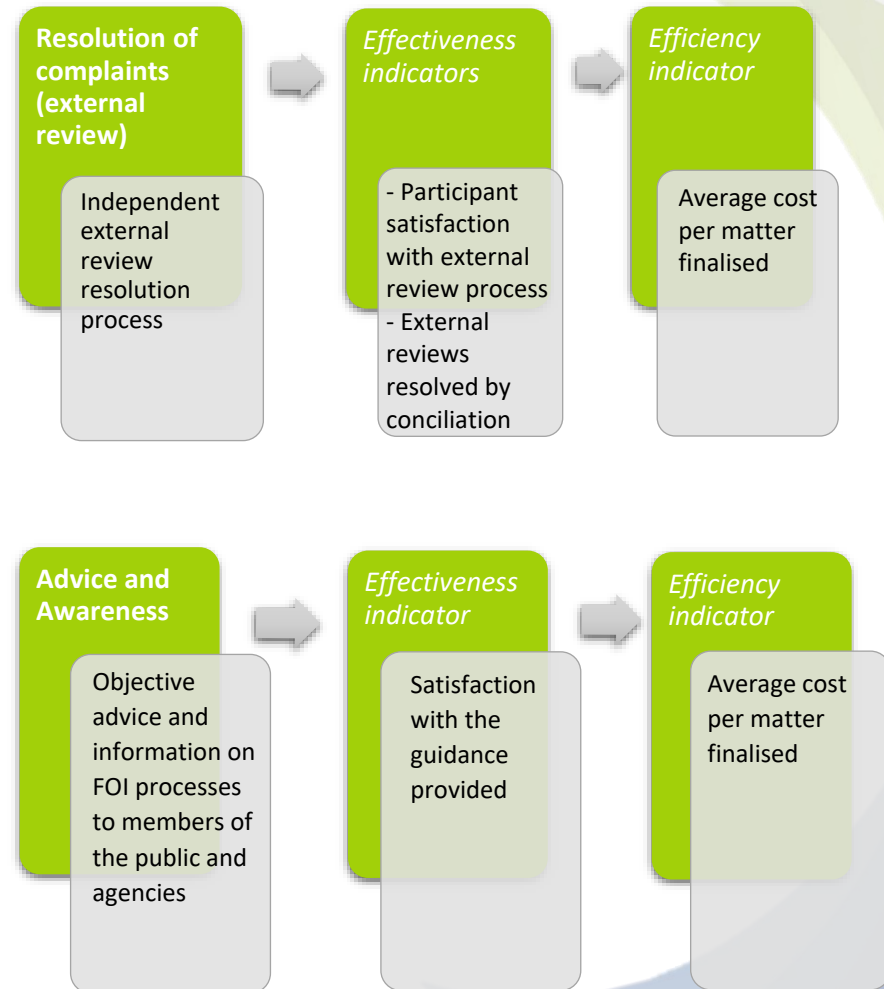
Access to documents and observance of processes in accordance with the FOI Act

Strong Communities: safe communities and supported families

Advice and Awareness

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 responsible for State and local government more accountable to the public. These objects promote transparency and accountability in government, a concept that contributes to the broader government goal of building strong communities.

## Outcome-based management framework



The Commissioner is an independent statutory officer. The OIC does not share any responsibilities with other agencies or receive any administrative or corporate support from any department or agency.

The audited performance indicators are described in more detail in the [key performance indicators](#) section of this report.

The relevant legislative framework for FOI legislation in Western Australia and other legislation that the OIC complies with can be found under the [Disclosures and Legal Compliance](#) section of this report.

### ***Administered legislation***

- *Freedom of Information Act 1992*
- *Freedom of Information Regulations 1993*

### ***Other key legislation that impacts OIC's activities***

- *Auditor General Act 2006*
- *Corruption Crime and Misconduct Act 2003*
- *Disability Services Act 1993*
- *Equal Opportunity Act 1984*
- *Financial Management Act 2006*
- *Industrial Relations Act 1979*
- *Minimum Conditions of Employment Act 1993*

- *Occupational Safety and Health Act 1984*
- *Procurement Act 2020*
- *Public Interest Disclosure Act 2003*
- *Public Sector Management Act 1994*
- *Salaries and Allowances Act 1975*
- *State Records Act 2000*