



# Office of the Information Commissioner

*Freedom of information for Western Australia*



## ANNUAL REPORT 2021/22



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.

## Contact Details

### Office address

Albert Facey House  
469 Wellington Street  
PERTH WA 6000 ([map](#))

### Telephone

(08) 6551 7888

### Freecall for WA country regions

1800 621 244

### Email

[info@oic.wa.gov.au](mailto:info@oic.wa.gov.au)

### Website

[www.oic.wa.gov.au](http://www.oic.wa.gov.au)

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



1 December 2022

**SPEAKER OF THE LEGISLATIVE ASSEMBLY  
PRESIDENT OF THE LEGISLATIVE COUNCIL**

### ANNUAL REPORT TO 30 JUNE 2022

In accordance with section 63 of the *Financial Management Act 2006* I hereby submit my report for the reporting period ended 30 June 2022.

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* (WA).

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

Catherine Fletcher  
INFORMATION COMMISSIONER

Albert Facey House, 469 Wellington Street Perth WA 6000  
Telephone: (08) 6551 7888  
Freecall (WA country): 1800 621 244  
Email: [info@oic.wa.gov.au](mailto:info@oic.wa.gov.au)  
Web: <http://www.oic.wa.gov.au>

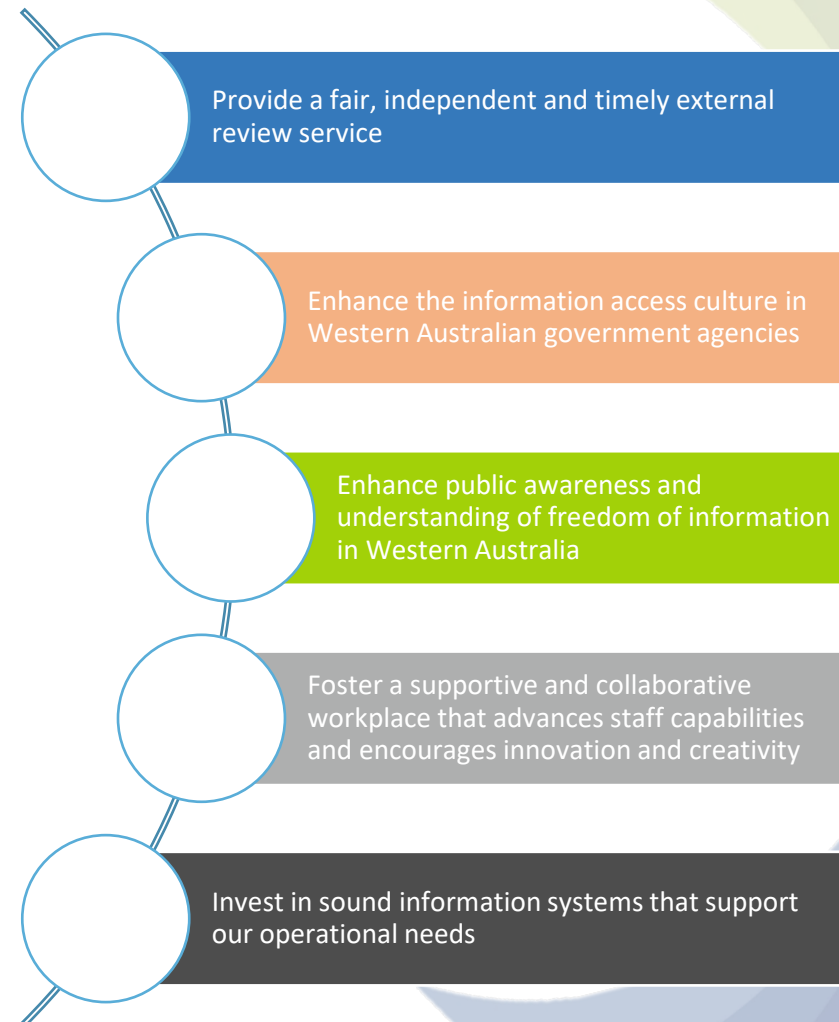
## About this report

Welcome to the Office of the Information Commissioner's 2021/22 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. We also educate agencies on their responsibilities under freedom of information (**FOI**) legislation and provide assistance to the community 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 be achieved.

## Executive Summary

### Information Commissioner's Report



I am pleased to present to Parliament and the community my report on the operation of the *Freedom of Information Act 1992 (WA)* (the **FOI Act**) across the West Australian public sector and my office's operations for the 2021/22 reporting period.

This is the 29<sup>th</sup> annual report of my office and my fourth report as Commissioner.

It is almost 30 years since my office commenced its operations and the FOI Act took effect. During its passage through the Parliament and upon enactment the FOI Act was, almost universally, considered a significant piece of legislation. It was part of a suite of measures to restore trust and accountability in government following the commercial scandals of the WA Inc period in the 1980s. It overturned the long-standing presumption of government secrecy that operated in most countries, even liberal democracies, well into the 20<sup>th</sup> century.

Changing citizen expectations about the need for government transparency and the information revolution brought about many critical governance and political reforms. FOI laws are an important part of that story.

Despite significant optimism that democracy would become the dominant universal political system, sadly we see that, once again, it is under threat and attack around the world, even in Australia, in ways we had not previously imagined. Misinformation, disinformation, decision-making secrecy and other information distortions all serve to undermine our freedoms and erode our trust in government. That trust is the essential ingredient in any democracy.

The effectiveness of a state's integrity institutions and frameworks is a key factor in whether that state is regarded as a safe place to live, work and invest.

As a robust democracy, that can also offer support to and engagement with emerging democracies in our region, all WA integrity institutions should be appropriately equipped with the necessary functions, powers and resources so they can continue to support the Parliament's work of holding the government to account. As the saying goes, the price of such freedoms is eternal vigilance.

Although it may not always be used to its full potential, or even sometimes misused, the FOI Act is a key integrity tool that enshrines important democratic safeguards. It provides for the public's right to know and the means for the public to participate more effectively in government. It is also aimed at making the persons responsible for State and local government more accountable to the public. I am deeply humbled to support the Parliament in this way.

As we enter the 30<sup>th</sup> year of operation of the FOI Act, in my view it is important to undertake a close examination of whether the FOI Act, and my office, is working and serving the

Parliament and the community as efficiently and as effectively as intended.

My office has begun that work. I will have more to say about that in next year's annual report which will benefit from, among other things: completed workforce and risk reviews; a proposed report examining recent and historical data about FOI in WA; more national data comparing the use of FOI laws around Australia; progress reports on a three year inter-jurisdictional research project examining the culture and practice of FOI in this and two other states; and recent surveys on community attitudes to information access across Australia.

### Law Reform

Accountability, integrity and trust in government have, once again, been dominant themes throughout Australia in recent times. Across the country there have been concerns expressed about unwarranted or excessive government secrecy, and poor or inadequate management, or even misuse, of government-held personal information. Additionally, issues of insufficient resourcing and other more egregious action that impedes the functional responsibilities of independent integrity agencies have also attracted public comment.

With no substantive review of the FOI Act ever carried out in this state since it commenced in 1993, the FOI Act ought to be reviewed for possible modernisation and reform. As a critical integrity tool dealing with a much changed, and still changing, information landscape, this legislation could be future proofed

so as to ensure ongoing and enhanced transparency and accountability of government.

This year I presented a submission to the Attorney General aimed at encouraging reform to, among other things, place greater emphasis on mandatory proactive information disclosure to replace the current emphasis on reactive information disclosure (i.e. moving from a 'pull' model to a 'push' model).

This reform could go some way to modernising the FOI Act in line with developments in several Australian and other jurisdictions. The other benefits of reform could include a more effective and better equipped government information regulator, less compliance work for agencies and better access to information for citizens. The net effect would be to enhance trust in government and better support our democracy.

I look forward to working with the Attorney's office to progress this submission.

### FOI in the Sector

In the year to 30 June 2022, a record number of FOI access applications were made to agencies across the sector, namely 21,171 applications which is a 4 per cent increase upon last year's 20,354 applications, and a 23 per cent increase over the 10 years since 2012/13. This upward trend translates into an increasing compliance burden for agencies which appears to be impacting both timeliness of agency decision and access to information for applicants. For the last five years, my office has collected data from agencies on the number of



FOI access applications dealt with within the permitted period under the FOI Act. Although the percentage of applications dealt with within the permitted period is higher this year than last year (increasing from 84.2% to 86.5%), both these numbers represent a decrease from four years ago (2017/18) when 90% of applications were dealt with within the permitted period. However, the overall average time for agencies to deal with access applications has fallen from 33.1 days last year to 24.9 days this year, which remains well within the 45 days provided in the FOI Act.

My office has also noted a considerable number of applications for external review being made based on agencies failing to make a decision within statutory timeframes, which is then taken to be a refusal of access, which triggers internal review rights.

A way to reduce that compliance burden for agencies is to become more pro-active in their information release, rather than re-active, thereby also providing enhanced and timelier access to information for the community. My office has recently published and publicised to the sector a new guide that assists and supports agencies to become more pro-active in this way.

### Comparing WA to other information access jurisdictions

The National Dashboard of Utilisation of Information Access Rights compares certain statistics about the use of information access rights across the information access jurisdictions within Australia. In the seven years of national metrics data (2014/15 to 2020/21), WA consistently receives more FOI

access applications on a per capita basis than any other jurisdiction.

In addition, WA consistently records the smallest percentage of external review applications of agency decisions as a percentage of access applications received.

Yet across jurisdictions, WA has very high rates of disclosure of information in full or partial form, and correspondingly low rates of refused access.

This data also suggests, in my view, that agencies are directing too many requests for non-contentious information to formal FOI processes instead of utilising more pro-active information release processes. They could then reserve the formal and more protracted FOI access processes for particularly sensitive or contentious government-held information.

### External review

An increase in the number of FOI access applications received by agencies has been accompanied by an increase in the number of applications for external review of agency decisions made to my office. This year my office received 194 applications for external review – a staggering 20.5% increase from last year. The number of external reviews received by my office in the last 10 years has grown by 50.4% (from 129 in 2012/2013 to 194 in 2021/22). While my office continues to explore ways to decrease the time taken to deal with external reviews, this trending increase in the number of external reviews received presents an ongoing and significant challenge to the timeliness of external reviews, particularly

when the resources of my office have remained largely static over the same period.

Without an urgent increase in resources for this work those delays cannot be effectively addressed which, in turn, could impact upon the morale and status of my office, support for the oversight functions of Parliament and public confidence in the FOI system.

### Advice and Awareness activities

The advice and awareness service of my office continues to deliver an outstanding service to the sector and the community despite being only resourced for one dedicated officer servicing this function.

Through this service we encourage agencies to adopt more informal and proactive information release initiatives outside of the FOI Act. As indicated earlier, adopting such an approach has significant benefits for both the community and government, increases public trust through government transparency, and leads to better service delivery and citizen engagement.

Significantly, it can also reduce the information disclosure burden of formal FOI processes on agencies. This approach is an important focus for my office and for the other information access jurisdictions in Australia.

This is reflected in the joint statement published during the year that promotes 'Open by Design Principles', and the publication by my office of the guide, *Open by Design: FOI and information release under the FOI Act* in September

2022, which builds on the open by design principles in the WA context.

### Other activities

During the reporting period, my office also engaged in a number of significant strategic projects to improve our operations and governance.

I commissioned independent reviews to look at workforce organisational issues and our risk management framework. We commenced preliminary work on a major and long overdue review of our ICT systems. These projects are critical to ensuring that we can meet the challenges of a highly digitised and information-rich public sector, meet community expectations about government accountability and transparency, and continue to effectively carry out our important statutory and governance obligations.

As previously reported, my office has committed to an inter-jurisdictional study by Monash University aimed at understanding the culture of FOI administration in agencies. This study will help inform my office's future advice and awareness activities.

My office also regularly contributes, usually by way of invitation, comments or submissions on government proposals on a wide range of matters where there are issues ranging from information access and privacy to government accountability, integrity and transparency.

I also personally participate in a number of cross-sector working groups aimed at better sector wide information

governance as well as my statutory role as an ex-officio State Records Commissioner.

I am also an active member of the Association of Information and Access Commissioners (**AIAC**) that has both Australian and New Zealand membership and an accredited member of the growing association known as the International Conference of Information Commissioners (**ICIC**). Working collaboratively with these bodies and other jurisdictions assists with the continuing improvement of information access processes in WA.

### Acknowledgements

Finally, I thank my staff for their professionalism and outstanding dedication to keeping our office functioning effectively within current resources, and for their unwavering commitment to promoting the principles of accountability and transparency even when the workload is, at times, very demanding.

The strategic projects and collaborations outlined above, combined with the steep rise in external review matters and the ongoing demand for FOI guidance and assistance to the sector and from the public, results in a very busy office. However, we do it all willingly and with passion as we recognise the immense privilege of being able to contribute to an effective democracy by serving the Parliament, the public sector and the community.

I also thank many of my public sector colleagues, particularly those in the accountability agencies, whose dedication to service, as well as their support for me, make working in the public sector frequently joyful and always rewarding.



**Catherine Fletcher**

Information Commissioner

Office of the Information Commissioner (WA)

## 2021/22 highlights



194

*External reviews  
received*



148

*External reviews  
finalised*



103

*External reviews  
resolved by  
conciliation*



146

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



19

*Published decisions of  
the Commissioner*



642

*Attendees at OIC  
briefing, training or  
education sessions*



959

*Enquiries answered  
from the community*



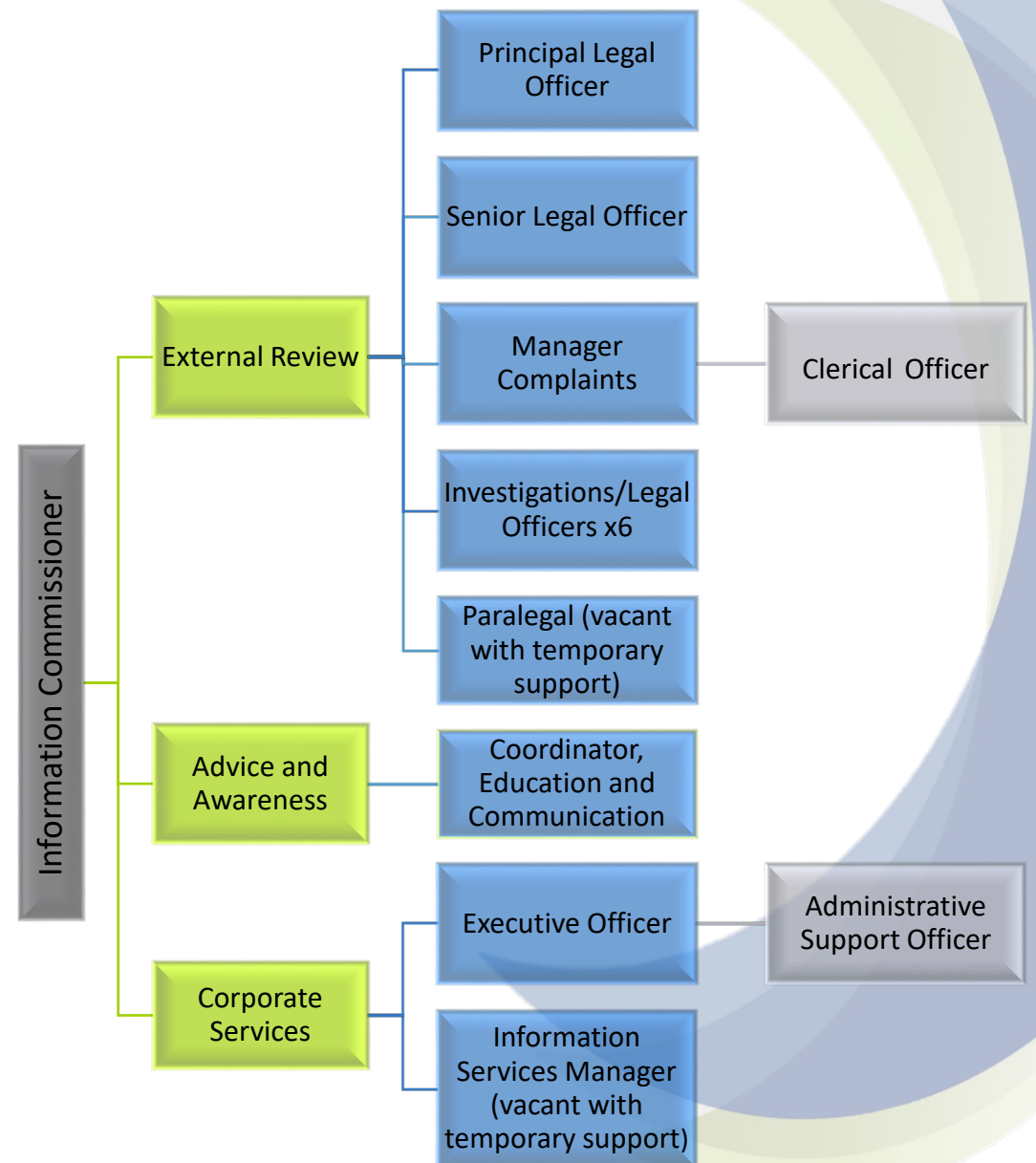
338

*Enquiries answered  
from local and State  
Government*

## About the Office of the Information Commissioner

As at 30 June 2022, the Commissioner was supported by 12 staff and three contracted officers 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 provides 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 provides 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; proposes initiatives to enhance efficiency in agency administration when dealing with applications received; and provides briefings and training 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



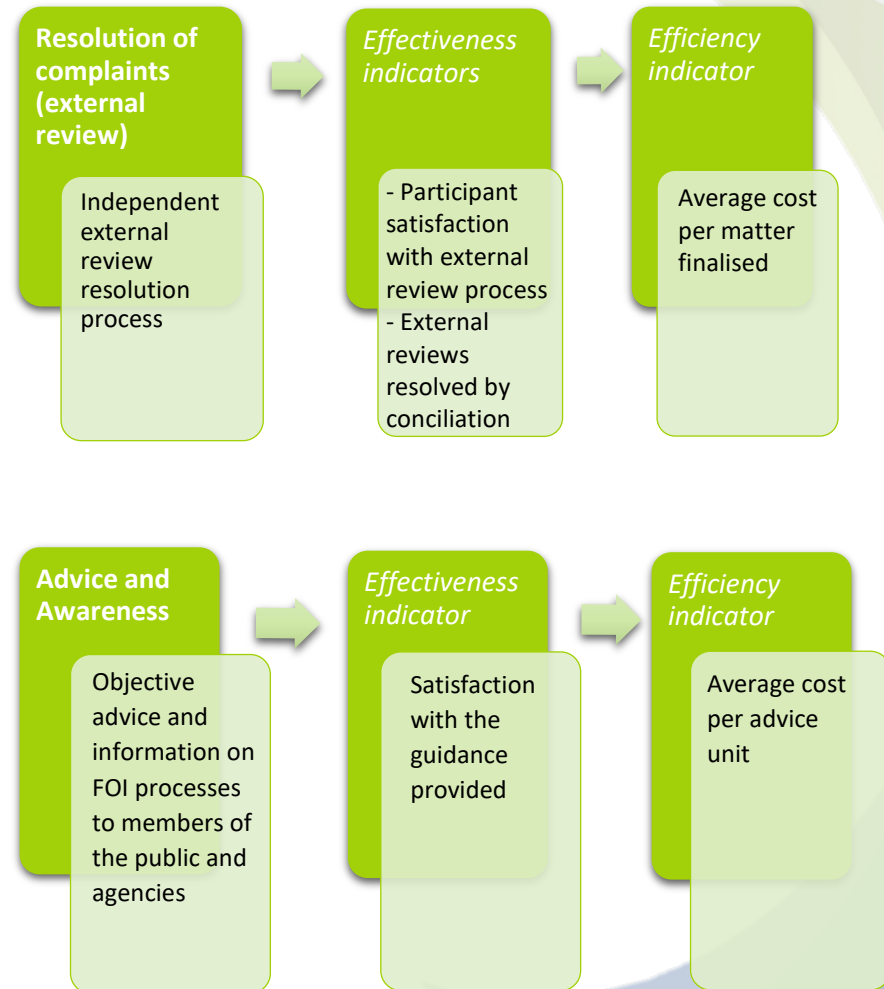
- 1. Resolution of complaints (external review)
- 2. Advice and Awareness

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

Safe, strong and fair communities: supporting our local and regional communities to thrive.

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 safe, strong and fair communities.

## Outcome-based management framework



**Resolution of complaints (external review)**

Independent external review resolution process

*Effectiveness indicators*

- Participant satisfaction with external review process
- External reviews resolved by conciliation

*Efficiency indicator*

Average cost per matter finalised

**Advice and Awareness**

Objective advice and information on FOI processes to members of the public and agencies

*Effectiveness indicator*

Satisfaction with the guidance provided

*Efficiency indicator*

Average cost per advice unit

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*
- *Work Health and Safety Act 2020*