



Office of the Information Commissioner

Freedom of information for Western Australia



ANNUAL REPORT 2021/22



Operational Performance

Snapshot of financial and operational performance indicators

	Target \$000	Actual \$000	Variation \$000
Total cost of services	2,384	2,612	228
Net cost of services	2,380	2,612	232
Total equity	709	388	(321)
Net increase/(decrease) in cash held	965	771	(194)

See the [Key Performance Indicators](#) and [Financial Statements](#) sections of this report for the OIC's full audited performance indicators and financial reports, including variance explanations.

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

	Target ⁽¹⁾	Actual	Variation
Resolution of Complaints			
<i>Key effectiveness indicators:</i>			
Participants satisfied with complaint resolution and external review processes	85%	80%	(5%)
Applications for external review resolved by conciliation	70%	70%	0%
<i>Key efficiency indicator</i>			
Average cost per external review finalised	\$7,016	\$9,674	\$2,658
Advice and Awareness			
<i>Key effectiveness indicator</i>			
Agencies satisfied with advice and guidance provided	98%	98%	0%
<i>Key efficiency indicator</i>			
Average cost of service per application lodged	\$219	\$331	\$112

(1) As specified in the Budget Statements.

External Review

Strategic Goal: Provide a fair, independent and timely external review service

Providing a fair, timely and effective formal external review process

- Additional templates revised and created
- Regular external review team and individual caseload meetings
- Ongoing review of external review processes to improve timeliness
- 148 external reviews finalised
- 69.6% of external reviews finalised by conciliation
- 80.4% participant satisfaction rate

Providing an efficient and effective early resolution process

- Assessment and prioritisation of all new matters
- Early intervention program (**EIP**) reviewed and refined
- Action completed in 84 matters within the EIP: 41 finalised as part of the EIP; and 43 reassigned for further external review

Providing clear decisions, with reasons, to best inform the public

- 19 decisions published
- 48 preliminary views issued

The main function of the Commissioner is to review decisions made by agencies under the FOI Act.

The performance of this service is measured in two ways: by the satisfaction of participants of an external review with the way in which the external review was conducted; and by the number of external review applications resolved by conciliation.

Detailed performance data on the number of external review applications received and completed, and the number and age of matters currently on hand, is updated monthly and published on our [website](#). [Table 6](#) provides detail on external review outcomes.

Dealing with external reviews

The Commissioner has powers to deal with an external review application in a number of ways including by conciliation, negotiation and compulsory conferences. These are in addition to the power to finalise an external review by issuing a binding determination. In accordance with section 70(2) of the FOI Act, the OIC seeks to ensure that the conduct of external review proceedings is not unduly legalistic or formal.

Conciliation

When a new external review is assessed and assigned to an officer (who acts on behalf of the Commissioner under certain delegated powers), consideration is given to any procedural options available to resolve the matter. Those procedural options may be pursued in the Early Intervention Program or when a matter is otherwise assigned to an officer. In an effort to deal with an external review in a more timely manner, the extent to which those options are pursued may be limited.

The OIC prefers to negotiate a conciliated outcome between the parties rather than issuing a formal determination. However, the nature of the information requested and the various interests of the parties means that conciliation is not always achievable.

This year's conciliation rate was 69.6%, which meets our yearly target of 70% and is a 7% increase from last year. In total, 447 matters of all types were finalised by the OIC in 2021/22. However, of those 447 matters, 148 were valid external reviews. Of the 148 external reviews resolved in 2021/22, 103 were resolved by conciliation.

The annual conciliation rate of external reviews finalised is one of the OIC's key performance indicators, which are outlined in full further in this report and report the conciliation rate for the past five years.

The following case studies are examples of matters that were conciliated during the reporting period.

Conciliation remains an important element of the external review process and can result either in resolution of the matter or clarification or narrowing of the issues in dispute.

Matter resolved after agency undertakes additional searches and located additional document

The complainant applied for external review of the agency's decision to refuse access to documents under section 26 of the FOI Act on the basis that the requested documents could not be found or did not exist.

At the OIC's request the agency undertook further searches and identified one document within the scope of the access application. The agency claimed that the document was subject to parliamentary privilege and therefore exempt under clause 12(c) of Schedule 1 to the FOI Act.

The complainant did not dispute the exemption claim and the matter was resolved.

External review discontinued following initial assessment

The complainant applied to the agency for correspondence regarding action taken by the agency in relation to a particular issue. The agency gave edited access to three documents on the basis that a small amount of personal information was exempt under clause 3(1) of Schedule 1 to the FOI Act. The agency also deleted information it considered fell outside the scope of the access application.

The complainant applied to the Commissioner for an external review of the agency's decision. During the course of the external review, the issue in dispute was reduced to whether the agency had correctly identified information as being outside the scope.

The OIC made inquiries with the agency about the processes associated with the subject matter of the requested documents. After considering the advice provided by the agency, an officer of the Commissioner provided the complainant with their initial assessment that the agency had correctly identified the information as falling outside the scope of the access application.

The complainant accepted the initial assessment and discontinued the application for external review.

Parties agree to reduced scope of access application

The complainant applied for access to documents relating to the acquisition of land. The agency considered

that the scope of the request was too broad and attempted to negotiate with the complainant to narrow the scope. The parties were unable to agree on a reduced scope and the agency refused to deal with the access application under section 20 of the FOI Act on the basis that to do so would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The complainant applied to the Commissioner for an external review of the decision on the basis that the agency did not provide sufficient assistance to narrow the scope of the access application and that the scope was not unreasonable.

At the request of the OIC, and in an effort to conciliate the matter, the agency provided further information to the complainant about the types of documents held by the agency and a summary of key events that occurred in relation to the acquisition of land.

With the assistance of the OIC, the parties agreed to a revised scope that the agency undertook to deal with in accordance with the FOI Act. As a result, the external review was resolved.

Agency provides further information and both parties accept initial assessment

The complainant applied for external review of the agency's decision to give edited access to documents relating to a workplace grievance involving the complainant. Some of the personal information that was

edited from the documents under clause 3(1) of Schedule 1 to the FOI Act related to third parties, including officers of the agency. The complainant also claimed that further documents existed.

The OIC asked the agency to provide information about the involvement of the officers of the agency, whose personal information was deleted from the documents. After considering the material then before the OIC, an officer of the Commissioner advised the agency that it was their initial assessment that some of the information about the officers of the agency who facilitated the grievance process, including names and positions, was unlikely to be exempt under clause 3(1) due to the limitation in clause 3(3). The agency accepted the initial assessment and gave the complainant access to an edited copy of the documents.

At the request of the OIC, the agency also conducted further searches and located an additional document. However, the complainant maintained that other documents existed. In relation to the existence of further documents, it was the officer's assessment that further documents either could not be found or did not exist.

Both parties accepted the initial assessment and the matter was resolved.

Access applicant accepts an edited document and the third party withdraws their external review

The complainant, a third party, applied to the Commissioner for external review of the agency's

decision to give access to a report which contained information that the complainant claimed was exempt under clause 4(1), 4(2) or 4(3) of Schedule 1 to the FOI Act.

The OIC made inquiries with the complainant and the agency and obtained further information in relation to the content of the report. After considering the material before the Commissioner, an officer of the Commissioner advised the parties that it was their initial assessment that access could be given to an edited copy of the report, with information that was exempt under clause 4(2) deleted.

The complainant accepted the initial assessment. After discussion with the OIC, the access applicant agreed to accept an edited copy of the report in line with the initial assessment.

As a result, there was nothing remaining in dispute for the Commissioner to determine and the matter was resolved.

Commissioner's preliminary view that documents are exempt under clause 5(1)(e)

The complainant applied to the agency for access to documents relating to an incident, including CCTV footage, photographs and notes. The agency refused access to two documents on the basis that they were exempt under clause 3(1) and clauses 5(1)(a), (f), (g) and (h) of Schedule 1 to the FOI Act. The complainant

applied to the Commissioner for an external review of the decision.

At the request of the OIC, the agency provided further material to support its claim that the disclosure of the documents could reasonably be expected to endanger the life or physical safety of any person.

The Commissioner provided the parties with her preliminary view of the matter, which was that the documents were exempt under clause 5(1)(e).

The complainant did not proceed with the external review and the matter was resolved.

Access to documents by way of inspection

The complainant applied for access to documents relating to a governance review, including a report produced by a third party commissioned by the agency to conduct the review. After consulting with the third party regarding the disclosure of the requested documents, the agency decided to grant full access, edited access and refused access to various documents within the scope of the access application.

The decision was made by the principal officer of the agency and the complainant applied to the Commissioner for external review of the agency's decision with respect to three documents. The third party was joined as a party to the external review under section 69(3) of the FOI Act.

The Commissioner provided the parties with her preliminary view, which was that one of the documents was not exempt under clause 6(1) of Schedule 1 to the FOI Act. The Commissioner was of the preliminary view that the other two documents were subject to copyright and contained some matter that was exempt under clause 8(2) of Schedule 1 to the FOI Act. It was the Commissioner's view that access by way of inspection could be given to these two documents with exempt matter deleted.

The parties accepted the Commissioner's preliminary view and the agency gave the access applicant access in full to a copy of one of the documents and access to an edited copy of the other two documents by way of inspection, as giving access to a copy would infringe copyright.

Agency reconsiders its decision and gives access to an edited copy of a document

The complainant, a former employee of the agency, applied for access to documents in relation to their employment. The agency refused access to a document on the basis that it was exempt under clause 11(1)(c) of Schedule 1 to the FOI Act.

The complainant applied for external review on the basis that the document contained personal information about the complainant and that the agency had failed to establish that disclosure of the document would 'have a

substantial adverse effect on an agency's management or assessment of its personnel'.

An officer of the Commissioner provided their initial assessment of this matter to the agency, which was that the document was not exempt under clause 11(1)(c) and that the complainant could be given access to an edited copy with third party personal information deleted under clause 3(1) of Schedule 1 to the FOI Act.

The agency withdrew its exemption claim and gave the complainant an edited copy of the document with personal information about third parties deleted. The complainant was satisfied with the access provided and the matter was resolved.

Agency accepts initial assessment and complainant accepts release of edited documents

The complainant applied to the agency for documents relating to a report prepared by the agency for the Minister responsible for the agency. The agency initially refused access to the requested documents on the basis that they were exempt under clause 6(1) of Schedule 1 to the FOI Act. On internal review the agency decided that the documents were outside the scope of the access application altogether.

Preliminary inquiries were made with the agency regarding its claim that the documents were not within scope and in relation to its initial claim that the documents were exempt under clause 6.

After considering the material before the Commissioner, an officer of the OIC advised the agency that it was their initial assessment that the documents were within the scope of the access application and that the exemption claim under clause 6 did not appear to be justified.

The agency accepted the officer's initial assessment and gave the complainant access to an edited copy of the documents, deleting personal information from the documents. The complainant was satisfied with the access provided and the matter was resolved.

Agency agrees to conduct searches and gives access to documents

The complainant applied for documents relating to a Memorandum of Understanding (**MoU**) between the agency and a third party. The agency refused access under clause 6(1) of Schedule 1 to the FOI Act on the basis that the documents would reveal the agency's deliberative processes; however the agency did not identify or describe the documents that it had refused access to.

During the external review process, the agency conducted further searches and identified a number of documents within the scope of the access application. The agency also advised that the negotiations relating to the MoU had been finalised and therefore the agency no longer claimed the requested documents were exempt under clause 6(1).

After consulting with third parties, the agency gave the complainant full and edited access to a number of documents and refused access to other documents on the basis that they were exempt under clause 7 of Schedule 1 to the FOI Act.

The complainant did not dispute either the access provided or the agency's exemption claim under clause 7 and the matter was resolved.

Early Intervention Program

The Early Intervention Program (**the EIP**) is designed to deal with external review matters more quickly and achieve resolution of matters informally, within the framework of the FOI Act. Implemented as a trial in 2019/20, the EIP strategy was reviewed and refined during the last reporting period and again in this reporting year. The matters to be dealt with by the EIP are selected on the basis of the issues in dispute between the parties, the types and numbers of exemptions claimed, and the complexity and sensitivity of the issues involved.

As was the case in the last reporting period, this year the primary approach of the EIP was to provide the parties with an

48.8% of matters completed by the EIP resulted in an outcome and did not require reassignment for further external review.

initial assessment of the issues in dispute. These were issued by an officer acting under delegated authority from the Commissioner, usually by email, and based on established precedent. This allows the affected party an opportunity to reconsider their position in a timely manner before the proceeding becomes more formal.

In 2021/22, 84 matters had action completed within the EIP, with 41 matters finalised as part of the EIP and 43 matters reassigned for further external review. By comparison, in 2021/21, 54 matters had action completed within the EIP, with 43 matters finalised as part of the EIP and 11 matters reassigned for further external review.

Matters finalised by the EIP have provided a timelier outcome for the parties and reduced the number of matters referred for further review. This allows the more complex, resource-intensive matters to be managed outside of the EIP.

External review outcomes under section 67(1)(b) of the FOI Act

Section 67(1)(b) provides that the Commissioner may, at any time after receiving an external review application, decide not to deal with it, or stop dealing with it, because it is frivolous, vexatious, misconceived or lacking in substance.

The Commissioner usually decides to stop dealing with an external review under section 67(1)(b) because it is lacking in substance. The Commissioner may make a decision on this basis after further assessment of the matter; because of action taken by the parties that addresses the issue(s) in dispute; or in certain circumstances after issuing her preliminary view of a

matter. Where the Commissioner informs the parties in her preliminary view that an agency's decision is justified and the complainant does not provide any meaningful response by the specified date, the Commissioner may finalise the matter by deciding that, under section 67(1)(b), it is lacking in substance.

The following table details the number and percentage of external reviews finalised under section 67(1)(b) compared to the total number of external reviews finalised for the last ten years.

	External reviews finalised	Section 67(1)(b) outcomes	
		#	%
2012/13	119	2	1.7%
2013/14	152	15	9.9%
2014/15	160	35	21.9%
2015/16	145	18	12.4%
2016/17	127	12	9.4%
2017/18	143	12	8.4%
2018/19	152	11	7.2%
2019/20	148	27	18.2%
2020/21	180	45	25.0%
2021/22	148	16	10.8%

As can be seen from the table, the number and percentage of times that the Commissioner has stopped dealing with an external review under section 67(1)(b) has decreased from the previous two years. This is likely to be due in part to the

decrease in the number of preliminary views issued in the three reporting periods, being 57 in 2019/20, 86 in 2020/21 and 48 in 2021/22.

Decisions made by the Commissioner

Where applications for external review remain unresolved after efforts are made to conciliate the matter, the Commissioner may need to finalise an external review by issuing a binding final determination. Before doing so, the Commissioner may issue a written preliminary view to the parties involved in the external review.

The purpose of the preliminary view is to give the parties an opportunity to review the Commissioner's understanding of the matters in dispute; identify any factual errors; and provide new and relevant information or submissions for her final consideration. While there is no legislative requirement to provide a preliminary view, the FOI Act does provide that the parties to an external review are to be given a reasonable opportunity to make submissions.

The preliminary view is addressed in full to the party to whom the Commissioner's preliminary view is largely adverse, with a copy provided to the other parties. An abridged copy may be provided to a party to avoid the disclosure of potentially exempt matter. Based on the preliminary view of the Commissioner, each party is provided the opportunity to reconsider their position, as applicable, and may withdraw or provide additional material in support of their position.

If any matters remain in dispute after the preliminary view has been issued, the Commissioner will, after considering any

further information and submissions, formally determine the issues in dispute between the parties.

The parties are informed in writing of the final decision and the reasons for it. The Commissioner is required to publish decisions in full or in an abbreviated, summary or note form, which are published on the OIC's website unless the decision is to stop dealing with a matter under section 67(1). It is the usual practice to identify all of the parties to the external review in the published decision, except in certain circumstances.

During the reporting period 19 applications for external review were finalised by formal published decision of the Commissioner (which is seven more than last year), and a summary of those follow. The decisions are published on our [website](#).

Re Aldridge and City of Canning [2021] [WAICmr 7 \(PDF\)](#)

Personal information about officers of the agency – clause 3(1)

The complainant sought external review of the agency's decision to refuse access to an email sent by a councillor to the Chief Executive Officer of the agency. The agency claimed that the email was exempt under clauses 5(1)(b), 5(1)(e) and 8(1) of Schedule 1 to the FOI Act.

The Commissioner was of the view that the email contained personal information which is, on its face, exempt under clause 3(1) of Schedule 1 to the FOI Act. The Commissioner considered whether the limits on the exemption in clauses 3(3) and 3(6) applied. The

Commissioner concluded that most of the personal information in the email was not prescribed details and that clause 3(3) did not apply. The Commissioner was of the view that, on balance, the public interest factors against disclosure outweighed the public interests in favour of disclosure and, as a result, clause 3(6) did not apply.

In considering whether it would be practicable to give edited access to the email under section 24 of the FOI Act, the Commissioner concluded that the extensive editing required to delete all of the exempt personal information would render the document unintelligible.

The Commissioner varied the agency's decision and found that the email was exempt under clause 3(1).

Re Boulter and Department of Local Government, Sport and Cultural Industries [2021] [WAICmr 8 \(PDF\)](#)

Steps taken to locate documents – section 26

The complainant sought external review of the agency's deemed decision to refuse access to documents on the basis that the agency did not make an initial decision or an internal review decision within the required timeframes. During the external review, the agency made a decision on access and gave the complainant access to an edited copy of documents. The complainant claimed that additional documents should exist.

The Commissioner accepted that it was reasonable to expect that additional documents should exist within the

scope of the access application and required the agency to conduct further searches. No further documents were identified. The Commissioner acknowledged that there were deficiencies in the agency's record keeping systems. However, based on the information before her, the Commissioner was satisfied that the agency had taken all reasonable steps in the circumstances to locate documents within the scope of the access application.

Accordingly, the Commissioner confirmed the agency's decision to refuse access to additional documents under section 26 of the FOI Act on the ground that those documents either could not be found or did not exist.

Re Threadgold and Shire of Augusta-Margaret River [2021] [WAICmr 9 \(PDF\)](#)

Architectural plans subject to copyright – section 27(1)(a) and 27(2)(c)

The complainant sought external review of the agency's decision to give him access to documents comprising architectural plans for a property belonging to another individual by way of inspection only. The agency gave access by inspection on the ground that giving access to a copy of the plans would involve an infringement of copyright belonging to a person other than the State (section 27(2)(c)).

The complainant claimed that the builder had copied his plans and that the complainant was the owner of the copyright. The Commissioner considered that it was not her role to settle a dispute about the ownership of

copyright, but rather to determine whether the agency's decision regarding access is justified. The Commissioner accepted that the plans were prima facie the subject of copyright belonging to the entity whose name appeared as the copyright owner in the plans, and that giving the complainant a copy of the plan would involve an infringement of copyright belonging to a person other than the State.

Therefore, the Commissioner confirmed the agency's decision to give access to the plans by way of inspection only, pursuant to section 27(1)(a) of the FOI Act.

Re Polglaze and Office of the Public Trustee Western Australia [2021] [WAICmr 10 \(PDF\)](#)

Historical versions of agency policies – section 20

The complainant sought access to all versions of two particular policies/procedures since 1994 and all documents relating to the revisions or changes, including any internal or external communications or notifications to individuals, clients of the agency (as an executor), agencies or other organisations. The agency refused to deal with the access application under section 20 on the ground that dealing with it would divert a substantial and unreasonable portion of its resources from its other operations.

The Commissioner was satisfied that the agency had taken reasonable steps to assist the complainant to change the application to reduce the amount of work needed to deal with it, by informing him of the manner in

which the records were stored, the searches it had conducted and the potential diversion of resources to deal with the application. The Commissioner noted that there is also a corresponding obligation on access applicants to work cooperatively with an agency and, in this matter, the complainant was not willing to reduce the scope.

The Commissioner accepted that the work required to deal with the complainant's access application would divert a substantial and unreasonable portion of the agency's resources away from its other operations. Among other factors, the Commissioner considered that the time period to which the application related (25 years), the location of the potential documents covered by the application and the nature in which those documents were stored by the agency, were all relevant factors.

The Commissioner confirmed the agency's decision to refuse to deal with the access application pursuant to section 20.

Re Onslow Resources Limited and Department of the Premier and Cabinet [2021] [WAICmr 11 \(PDF\)](#)

Documents relating to a mining tenement – clause 4(3)

The complainant applied to the agency for access to documents relating to a particular mining tenement lease held by a third party. The disputed document in the

external review was correspondence from the former Premier to the third party.

The agency decided to give the complainant edited access to the disputed document on the basis that the deleted information was exempt under clause 4(3) of Schedule 1 to the FOI Act. The third party was joined as a party to the external review. The exemption in clause 4(3) is concerned with protecting from disclosure information about the business, professional, commercial or financial affairs of a person.

The exemption consists of two parts and the requirements of both parts (a) and (b) must be satisfied in order to establish a prima facie claim for exemption. If the requirements of both parts (a) and (b) are satisfied, the application of the limit on the exemption in clause 4(7) – the public interest – must also be considered. Taking into account all of the information before her, the Commissioner was not persuaded that disclosure of the disputed information could reasonably be expected to have an adverse effect on the affairs of the third party or to prejudice the future supply of information of that kind to the Government or an agency. Therefore, the Commissioner found that the requirements of clause 4(3)(b) had not been met.

As a result, the Commissioner was not required to consider the limit on the exemption in clause 4(7) and she did not do so. The Commissioner set aside the agency's decision and found that the disputed information was not exempt under clause 4(3).

Re Onslow Resources Limited and DevelopmentWA
[2021] [WAICmr 12 \(PDF\)](#)

Correspondence between government agencies relating to a mining tenement – clause 6(1)

The complainant applied to the agency for access to documents comprising correspondence between Landcorp and the former Department of State Development, relating to particular mining tenements held by the complainant. The agency claimed that the documents remaining in dispute were exempt under clause 6(1).

Clause 6(1) provides that matter is exempt if its disclosure would reveal any opinion, advice or recommendation that has been obtained, prepared or recorded; or any consultation or deliberation that has taken place, in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency, and that such disclosure would, on balance, be contrary to the public interest. In the case of a claim for exemption under clause 6(1), the onus of establishing that disclosure would, on balance, be contrary to the public interest rests with the agency.

The Commissioner observed that the decision-making process in this instance had been completed in June 2015 and that the deliberations were therefore complete. The Commissioner was not persuaded that disclosure of the disputed information would adversely affect the decision-making processes of an agency or that

disclosure would, for some other reason, be demonstrably contrary to the public interest.

The Commissioner set aside the agency's decision and in substitution found that the disputed information is not exempt under clause 6(1).

Re Clark and Shire of Wyndham-East Kimberley
[2021] [WAICmr 13 \(PDF\)](#)

Charges for dealing with an application – sections 16(1) and 26, and regulations 3, 5 and 6

The complainant sought access to certain documents concerning her, as well as other documents which included certain position description documents, personnel records, file notes and correspondence. The agency gave access to full and edited copies of a number of documents. The agency imposed charges of \$372.50 for dealing with the access application.

The complainant sought review of, among other things, the charges imposed by the agency. The Commissioner acknowledged the difficulties that small (and remotely based) agencies encounter in the training, development and experience of staff in FOI matters, but did not consider it proportionate to pass that cost onto access applicants. To do so would have the potential effect of making access applications cost prohibitive to many people, which undermines the intent of the FOI Act itself. The Commissioner observed that it is not intended that

agencies apply a strict ‘user-pays’ approach to calculating charges under the FOI Act.

The Commissioner set aside the agency’s decision to impose charges in the amount of \$372.50 and, in substitution, decided that the agency could impose charges for dealing with the complainant’s access application in the amount of \$210.00.

Re Goiran and Department of Health [2021] [WAICmr 14 \(PDF\)](#)

Personal information about patients and medical practitioners – clauses 3(1) and 5(1)(e)

The complainant sought access to documents that included information about abortions carried out from 20 weeks gestation. The agency gave the complainant access to edited copies of documents with certain information deleted on the ground it was exempt under clauses 3(1) and 5(1)(e) of Schedule 1 to the FOI Act.

The Commissioner was satisfied that the disclosure of certain specific medical information about individual patients would disclose personal information that was prima facie exempt under clause 3(1). The Commissioner did not consider that the public interests in disclosing that personal information outweighed the public interest in the protection of the privacy of those individuals. Additionally, the Commissioner found that disclosure of the names and signatures of the medical practitioners, in the particular circumstances, could reasonably be expected to endanger the physical safety

of a person and was therefore exempt under clause 5(1)(e). The Commissioner noted the introduction of the *Public Health Amendment (Safe Access Zones) Act 2021* to create ‘safe zones’ around clinics and considered it demonstrated a recognition of the concerns for the safety of both staff and patients.

The Commissioner found that the disputed information was exempt under clauses 3(1) and 5(1)(e) and confirmed the agency’s decision.

Re Graham and Shire of Toodyay [2021] [WAICmr 15 \(PDF\)](#)

Employment contracts – clause 3(1) and section 24

The complainant applied to the agency for access to certain employment contracts of a former officer of the agency and of a current officer of the agency. Access was refused to the requested documents on the basis that they were exempt under clauses 3(1), 8(2) and 11(1)(c) of Schedule 1 to the FOI Act.

The Commissioner found that the disputed documents were not exempt in their entirety, as claimed by the agency. Instead, the Commissioner found that certain information in the disputed documents – comprising information about remuneration packages, residential addresses, superannuation contributions, housing allowances, relocation expenses, professional development fees, motor vehicles and signatures – was exempt under clause 3(1). The Commissioner considered that, under section 24 of the FOI Act, it was

practicable for the agency to give the complainant access to the disputed documents with the exempt information deleted.

The Commissioner set aside the agency's decision.

Re Onslow Resources Limited and Department of Jobs, Tourism, Science and Innovation [2021]
[WAICmr 16 \(PDF\)](#)

Access to notes from meeting with industry – clause 4(3)

The complainant applied to the agency for access to the notes of a particular meeting between the former Department of State Development and a named third party (**the third party**). The agency had previously given the complainant access to an edited copy of the document in response to an earlier access application, where the agency had deleted certain information on the basis that it was outside the scope of that access application. In the current matter, the agency decided to give the complainant access to an edited copy of the disputed document, claiming that the deleted information (**the disputed information**) was exempt under clause 4(3) of Schedule 1 to the FOI Act. The third party was joined as a party to the external review.

The Commissioner accepted that disclosure of the disputed information would reveal information about the business, professional, commercial or financial affairs of the third party. However, the Commissioner was not persuaded that disclosure of that information could reasonably be expected to have an adverse effect on the

affairs of the third party or to prejudice the future supply of information of that kind to the Government or an agency.

Therefore, the Commissioner set aside the agency's decision and, in substitution, found that the disputed information was not exempt under clause 4(3).

Re 'B' and Shire of Ravensthorpe [2021] [WAICmr 17 \(PDF\)](#)

Documents about termination of employment – clause 3(1)

The complainant sought access to documents relating to the termination of his employment. The agency decided to give access to four documents and to refuse access to a further seven documents. The agency claimed that the disputed documents were all exempt under clauses 6(1), 8(2) and 11(1) of Schedule 1 to the FOI Act and that some were also exempt under clause 3(1).

It was the Commissioner's preliminary view that the disputed documents were not exempt under clauses 6(1), 8(2) or 11(1) but that one document was exempt under clause 3(1). The Commissioner was also of the preliminary view that the remaining documents contained some personal information that was exempt under clause 3(1) but that it was practicable for the agency to give the complainant access to edited copies of those documents.

The agency accepted the Commissioner's preliminary view, but the complainant submitted it was in the public interest to give him access to the personal information about other individuals so that he could pursue the matter further. In considering the clause 3(6) limitation and the public interests for and against disclosure, the Commissioner considered that the public interest in the accountability of the agency had been satisfied by the information to which access had been given, and that pursuit of the matter was a private interest rather than a public interest.

The Commissioner confirmed the agency's decision that the disputed information was exempt under clause 3(1).

Re McLerie and City of Melville [2022] [WAICmr 1 \(PDF\)](#)

CCTV footage of a local government council meeting – section 26

The complainant applied for access to certain audio and visual (CCTV footage) recordings of a Council meeting held at the offices of the agency. In the course of dealing with the access application, and as part of the conciliation process undertaken by the Commissioner's office, the agency gave the complainant access to a copy of the audio recording and edited copies of CCTV footage. The complainant maintained that additional CCTV footage from three other cameras existed. The Commissioner considered whether the additional CCTV footage could

not be found or did not exist under section 26 of the FOI Act.

The Commissioner accepted that there were reasonable grounds to believe that further documents exist, or should exist. Inquiries were made with the agency to establish the searches undertaken. The agency conducted additional searches and provided a detailed explanation of its searches.

Having considered all of the information before her, and taking into account the further searches undertaken by the agency, the Commissioner was satisfied that the agency had taken all reasonable steps to locate all of the requested documents and that although additional documents (CCTV footage from three cameras) may exist, or may have existed for a period of time, they could not be found.

The Commissioner found that the agency's decision to refuse access to documents under section 26 on the ground that further documents either cannot be found or do not exist, was justified.

The Commissioner confirmed the decision of the agency.

Re Onslow Resources Limited and Department of Jobs, Tourism, Science and Innovation [2022] [WAICmr 2 \(PDF\)](#)

Correspondence relating to a mining tenement – clause 4(3)

The complainant applied to the agency for access to documents relating to a particular mining tenement lease held by Onslow Salt Pty Ltd (**the third party**). The documents identified by the agency included correspondence between the former Premier and the third party, and the Director General of the former Department of State Development and the third party.

The agency decided to give the complainant access to edited copies of the documents on the basis that the deleted information (**the disputed information**) was exempt under clause 4(3) of Schedule 1 to the FOI Act.

The third party was joined as a party to the external review. The third party consented to the disclosure of one document but maintained that the rest of the disputed information was exempt under clause 4(3).

The Commissioner accepted that the disputed information, if disclosed, would reveal information about the business affairs of the third party and that the requirements of clause 4(3)(a) had been met. Both the agency and the third party made general claims but did not explain how disclosure of the disputed information could reasonably be expected to have an adverse effect on the affairs of the third party. Additionally, as the disputed information was not information provided by the third party, but to the third party, the Commissioner was not persuaded that its disclosure could reasonably be expected to prejudice the future supply of information of that kind to the Government or an agency. Therefore, the

Commissioner found that the requirements of clause 4(3)(b) had not been met.

As a result, the Commissioner was not required to consider the limit on the exemption in clause 4(7) and she did not do so. The Commissioner set aside the agency's decision and, in substitution, found that the disputed information was not exempt under clause 4(3).

Re 'C' and Edith Cowan University [2022] [WAICmr 3 \(PDF\)](#)

Documents relating to misconduct allegations – clause 3(1)

The complainant sought access to documents relating to allegations of misconduct made against him. The agency gave the complainant access to edited copies of documents with certain information deleted on the ground it was exempt under clauses 3(1), 6(1) and 8(1) of Schedule 1 to the FOI Act (**the disputed matter**).

The Commissioner was satisfied that the disputed matter was exempt personal information under clause 3(1) and considered whether disclosure was in the public interest. The complainant submitted that the public interests in natural justice, accountability of officers and exposing corruption weighed in favour of disclosure. The Commissioner considered that the public interest in the accountability of public universities was satisfied by the documents released. The Commissioner was satisfied that the documents released to the complainant showed he was informed of the substance of the allegations

against him. Therefore, the Commissioner did not consider that the public interest in natural justice required the disclosure of the exempt matter.

The Commissioner was of the view that the public interest in protecting the privacy of individuals was strong. The Commissioner also considered that, in cases where individuals provided information to an agency in confidence, there was a real risk that disclosure of that information would dissuade individuals from volunteering information in similar situations in the future. On balance, the Commissioner found that the public interest in the protection of the privacy of individuals outweighed any public interests in favour of disclosure of the disputed matter.

During the external review, the complainant's agent applied to be joined to the matter under section 69(2) of the FOI Act. As none of the disputed matter related to the agent, the Commissioner determined that the agent was not a third party under section 32 of the FOI Act and that the agent would therefore not be joined.

The complainant identified issues with the documents he was given access to and alleged they were 'knowingly and deliberately falsified'. However, the Commissioner was satisfied that the issues with the documents were administrative errors.

The Commissioner found that the disputed matter was exempt under clause 3(1) and confirmed the agency's decision.

Re Gilbert & Tobin and Department of Jobs, Tourism, Science and Innovation [2022] [WAICmr 4 \(PDF\)](#)

Ministerial consents under mining legislation – clauses 4(2) and 8(1)

The complainant applied for access to certain ministerial consents from 2013 in relation to the *Mining Act 1904*, the *Mining Act 1978* and the *Collie Coal (Griffin) Agreement Act 1979*. The agency identified one document within the scope of the access application and gave access to an edited copy of that document, claiming the deleted information (**the disputed information**) was exempt under clauses 4(2) and 8(1) of Schedule 1 to the FOI Act.

Clause 4(2) provides that matter is exempt if its disclosure would reveal information that has a commercial value to a person and could reasonably be expected to destroy or diminish that commercial value. The Commissioner was of the view that the disputed information of itself was not valuable for the purposes of carrying out the commercial activities of a person; that the information was out of date; and that it was not likely that another party would be prepared to pay for the information. The Commissioner was not persuaded that the disputed information was exempt under clause 4(2).

Clause 8(1) provides that matter is exempt matter if its disclosure would be a breach of confidence for which a legal remedy could be obtained. The agency did not provide any information to support its claim that a contractual obligation of confidence existed. Therefore

the Commissioner was not persuaded that the exemption applied.

The Commissioner set aside the agency's decision and found that the disputed information was not exempt under clauses 4(2) or 8(1).

Re Humphrys and State Administrative Tribunal [2022] WAICmr 5 (PDF)

Limited access to documents of a tribunal – section 23(1)(b) and clause 5 of the Glossary

The complainant sought access to documents regarding certain matters that had been heard by the State Administrative Tribunal (**the SAT**). The SAT refused access to the requested documents under section 23(1)(b) of the FOI Act, which provides that an agency may refuse access to a document if it is not a document of the agency.

To determine whether the requested documents were 'documents of the agency,' the Commissioner considered clause 5 of the Glossary to the FOI Act, which provides that a document relating to a court is not regarded as a document of a court unless it relates to matters of an administrative nature. The Commissioner considered, firstly, whether the SAT was a 'court' for the purposes of the FOI Act, and secondly whether the requested documents related to matters of an administrative nature.

The Commissioner applied the decision of the Supreme Court of Western Australia in *Salaries and Allowances*

Tribunal v West Australian Newspapers Ltd [2008] WASC 39 which relevantly held:

- 'the word 'tribunal' is used in the [FOI] Act to connote a body which performs judicial or quasi-judicial functions which are analogous to those performed by a court'; and
- documents 'of an administrative nature' mean 'documents which relate to the administration of the court' and include documents relating to the caseload and efficiency of the court, but not documents relating to individual cases before the court, such as documents or evidence filed by parties.

The Commissioner found that the SAT was a 'court' for the purposes of the FOI Act and that the requested documents related to certain proceedings before the SAT and were not of an administrative nature. Therefore, the Commissioner found that the requested documents were not 'documents of the agency' under section 23(1)(b) of the FOI Act and confirmed the decision of the agency.

Re Onslow Resources Ltd and Department of Jobs, Tourism, Science and Innovation [2022] WAICmr 6 (PDF)

Information about the business affairs of a third party – clauses 4(3), 6(1) and 8(2)

The complainant applied for access to a list of documents that contained information about a third party. The agency decided to refuse access to three documents,

give access to two documents and to give access to an edited copy of the remaining 36 documents, claiming that the deleted information (**the disputed information**) was exempt under clauses 4(3), 6(1) and 8(2) of Schedule 1 to the FOI Act.

The Commissioner considered that, as the disputed information was required for the purpose of obtaining approvals to carry out works, it was not open to the third party, or other individuals, to refuse to provide the information. Accordingly, the Commissioner was not persuaded that disclosure of the disputed information could reasonably be expected to prejudice the future supply of information of that kind to the Government or an agency.

Further, given the age and the nature of the disputed information, and the fact that the site to which it related was leased by the third party, the Commissioner was not persuaded that disclosure of the information would advantage a competitor. Taking into account all of the information before her, the Commissioner was not persuaded that disclosure of the disputed information could reasonably be expected to have an adverse effect on the affairs of the third party. Therefore, the Commissioner found that the disputed information was not exempt under clause 4(3).

In relation to the agency's exemption claims under clause 6(1), the Commissioner considered that the limit in clause 6(4) – which provides that matter is not exempt if at least 10 years have passed since it came into existence –

applied to the disputed information in two of the documents. The Commissioner considered that the disputed information in the remaining document was of an instructive or administrative nature and that it was not contrary to the public interest to disclose such information. Therefore, the Commissioner found that the disputed information was not exempt under clause 6(1).

Although the Commissioner accepted that the disputed information may be of a confidential nature, she was not persuaded that its disclosure could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency. Therefore, the Commissioner found that the disputed information was not exempt under clause 8(2).

The Commissioner set aside the agency's decision.

Re McLerie and Western Australia Police [2022]
[WAICmr 7 \(PDF\)](#)

Documents relating to the investigation of a complaint against a third party – clause 3(1) and section 23(2)

The complainant applied for access to documents relating to the agency's interaction with a named third party, and the third party's lawyer, in relation to the investigation of a complaint lodged by the complainant against the third party. The complainant also applied for access to certain documents relating to charges against the third party.

The agency refused access to the requested documents under section 23(2) of the FOI Act on the ground that it

was apparent from the nature of the documents, as described in the complainant's access application, that they would all be exempt under clause 3(1) of Schedule 1 to the FOI Act.

The Commissioner expressed the view that the requirement in paragraph 23(2)(a) that 'all of the documents are exempt documents' indicates that it is not sufficient that all of the documents would be prima facie exempt. In her view, where an exemption clause has limits on the exemption, before an agency can find that all documents would be 'exempt documents' under section 23(2), it must consider whether any relevant limits on the exemption apply.

The Commissioner considered the limitations on the exemption in clause 3(1), including the public interest limitation in clause 3(6), and was satisfied that none of them applied.

The Commissioner found that it is apparent from the nature of the documents as described in the access application that, if any such documents exist, they would be exempt under clause 3(1) and that there is no obligation on the agency under section 24 of the FOI Act to give access to an edited copy of any of those documents.

The Commissioner confirmed the agency's decision to refuse access to the requested documents under section 23(2) of the FOI Act.

Re McLerie and City of Melville [2022] [WAI Cmr 8](#) (PDF)

Request for documents about neighbouring property – section 26

The complainant applied to the agency for access to documents about a neighbouring property. The agency gave the complainant access to a number of documents but he claimed that additional documents should exist. That was, in effect, a claim that the agency had refused access to documents pursuant to section 26 of the FOI Act.

In dealing with section 26, the Commissioner considers that the questions to be answered are whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be, held by the agency; and, if those questions are answered in the affirmative, whether the agency has taken all reasonable steps to find those documents. If the Commissioner is not satisfied that there are reasonable grounds to believe that additional documents should exist, the onus is on the complainant to provide the Commissioner with material to establish this claim.

The Commissioner considered that the manner in which the agency had dealt with the complainant's access application in this case made it difficult to ascertain the exact progress of the matter and the documents to which access had been given. However, after considering all of the information before her, including the complainant's submissions, the Commissioner did not consider that it

was reasonable to believe that additional documents existed within the scope of the complainant's access application.

Accordingly, the Commissioner confirmed the agency's decision to refuse the complainant access to further documents pursuant to section 26 on the ground that those documents either cannot be found or do not exist.

External review outcome benefits

When an external review is finalised by the OIC the outcome is recorded as one of four types of legislative outcome (see [Table 6](#)). The FOI Act outlines the basis on which an external review can be finalised as follows:

- By formal published decision under section 76(2) where the Commissioner formally determines any issues remaining in dispute and makes a decision that either confirms, varies or sets aside the agency's decision and makes a decision in substitution.
- By decision under section 67(1)(a) where the Commissioner decides to stop dealing with the matter because it does not relate to a matter the Commissioner has power to deal with.
- By decision under section 67(1)(b) where the Commissioner decides to stop dealing with the matter because it is frivolous, vexatious, misconceived or lacking in substance.
- By conciliation where the external review is finalised on the basis that there are no issues remaining in dispute that the Commissioner is required to determine.

Summary details of the external review process, which may include some outcomes achieved for the parties during that process, are described in published formal decisions and case studies of conciliated matters outlined in this report. However, those summaries do not necessarily describe the full extent of the benefits to a party, particularly the complainant, which are achieved during the external review.

For example, a formal published decision may state that an agency's decision is confirmed in relation to any issues that remain in dispute at the end of the external review process. However, it is often the case that a significant amount of what was in dispute at the commencement of the external review is resolved during the external review process, meaning the Commissioner was not then required to formally determine those issues.

In order to better reflect and record all outcomes achieved, from 1 July 2019 the OIC has recorded benefits to a party that may not otherwise have been reflected when only using one of the aforementioned legislative outcomes of an external review. In some cases, more than one benefit can be achieved per external review.

105 additional
outcome benefits
were recorded from
148 external reviews
finalised

For each external review finalised, case officers are required to identify whether:

- access to additional documents or parts of documents was given to the complainant;
- additional action was taken by the agency during the external review resulting in more information being provided to the applicant;
- the scope of the external review was reduced by a party; or
- no additional benefits were attributed to a party to an external review.

In the first year recording this information (2019/20) 148 external reviews were finalised. In the second reporting period (2020/21) 180 external reviews were finalised. In the third (current) reporting period (2021/22) 148 external reviews were finalised. The following table outlines the outcome benefits recorded from the finalised external reviews for all three years.

	2019/20		2020/21		2021/22	
	#	%	#	%	#	%
Additional documents or parts of documents released to the complainant	45	30.4	42	23.3	45	30.4
Additional action taken by the agency	53	35.8	61	33.9	50	33.8

	2019/20		2020/21		2021/22	
	#	%	#	%	#	%
Reduction in scope	8	5.4	15	8.3	10	6.8
No additional benefit	55	37.2	69	38.3	50	33.8

External review activity over the last 10 years

In the last ten years the OIC has received a total of 1,522 external reviews (average of 152.2 per year) and finalised a total of 1,474 (average of 147.4 per year).

Period	Rec'd	Avg per year	Finalised	Avg per year
2012/13 – 2016/17	660	132.0	703	140.6
2017/18 – 2021/22	862	172.4	771	154.2
	+202	+40.4	+68	+13.6
	↑30.6%		↑9.7%	

By assessing each five year period, it is clear that although the OIC has increased the number of external reviews finalised by 9.7% over the last five years there has been a significant corresponding increase of 30.6% in the number of external reviews received. This increase has contributed to the current position of the OIC in respect of the number of external reviews on hand and the time it takes to finalise them.

Timeliness of external review

Timeliness of the external review process is an ongoing challenge, particularly managing significant increases in the number of external reviews received within current resources.

The OIC consistently monitors the age of external reviews on hand. The manner in which external reviews are dealt with is subject to a number of factors that will influence the priority for being assigned and the manner in which the external review proceeds.

We continue to review our processes to find efficiencies wherever practicable, without compromising the integrity of the external review process.

The following tables outline the percentage of external reviews finalised by age for the last ten years and the percentage of external reviews on hand at the end of each reporting period by age for the last ten years.

Percentage of external reviews finalised by age

	Less than 6 months	Between 6 and 12 months	Greater than 12 months
2021/22	48.0	33.8	18.2
2020/21	35.6	38.3	26.1
2019/20	46.6	34.5	18.9
2018/19	60.5	34.2	5.3
2017/18	63.6	25.2	11.2
2016/17	66.1	24.4	9.5

	Less than 6 months	Between 6 and 12 months	Greater than 12 months
2015/16	67.6	19.3	13.1
2014/15	68.8	18.8	12.5
2013/14	39.5	38.1	22.4
2012/13	26.9	44.5	28.6

Percentage of external reviews on hand by age

	Less than 6 months	Between 6 and 12 months	Greater than 12 months
2021/22	54.1	28.1	17.8
2020/21	64.0	23.0	13.0
2019/20	44.9	35.6	19.5
2018/19	68.0	30.0	2.0
2017/18	86.9	11.8	1.3
2016/17	61.1	16.7	22.2
2015/16	66.7	19.3	14.0
2014/15	66.7	23.2	10.1
2013/14	51.6	22.6	25.8
2012/13	57.0	28.0	15.0

Advice and Awareness

Strategic Goal: Enhance the information access culture in Western Australian government agencies

Provided clear, accurate, relevant and timely advice to agency staff to enhance their understanding of their responsibilities under the WA FOI Act.

- Responded to 338 phone and written enquiries from agencies
- New format for the FOI Newsletter launched in September 2021, now at 306 subscribers

Ensured our resources, tools and training services support information access competency within agencies

- Online FOI Fundamentals Series available
- FOI briefings and training provided
- Liaison with the FOI Agency Reference Group
- Review of all current publications continuing

Identified and recommend changes to legislation and administrative practices that will facilitate improved information access practices across the State

- Recommendations published in annual report
- Submission made to the Attorney General regarding a review of the FOI Act
- Information access principles promoted

Explored opportunities for collaboration to champion the principles of open government

- Participated in events with the Association of Information Access Commissioners
- Participated in the International Conference of Information Commissioners
- Launched a draft publication for comment providing guidance about Open by Design principles

The OIC seeks to ensure that agencies and their staff value FOI as part of an agency's operations and that FOI Coordinators, decision-makers and principal officers are aware of their responsibilities under the FOI Act. An understanding of agency obligations under the FOI Act should form part of any public sector employee's competency. Training and briefings are provided to State and local governments as part of those activities.

Strategic Goal: Enhance public awareness and understanding of freedom of information in Western Australia

Ensured we provided the community with accessible, inclusive and user-friendly information

- Responded to 959 in-person, phone and written enquiries from members of the public

Promoted community understanding about the role of the Commissioner

- The Commissioner has spoken at a number of events to promote an understanding of her role

Increased community awareness of freedom of information rights

- International Access to Information Day promoted.
- Animation created in collaboration with other information access jurisdictions to promote an understanding of the right to access documents and added to website

The OIC provides information for members of the public and those who may advocate for or assist members of the public to understand the rights and processes outlined in the FOI Act. Training and briefings are provided to non-government groups as part of those activities.

FOI training for FOI Coordinators and decision-makers

In March 2021 the OIC launched an online course that agency staff can access at any time, at their own pace: the [FOI Fundamentals Series](#). The series consists of eight online modules aimed at State and local government officers dealing with FOI in their agency. The series includes the material that was previously covered in the FOI Coordinator's Workshop.

The FOI Fundamentals Series covers the following topics:

- FOI Basics (module 1);
- dealing with an access application (modules 2 and 3);
- the exemptions (modules 4 and 5);
- third parties (module 6);
- notices of decision and review rights (module 7); and
- other requirements of the FOI Act, including a series summary (module 8).

Completion of all modules will assist participants understand an agency's obligations when dealing with access applications under the FOI Act and learn strategies to deal with access applications efficiently and effectively.

Each module consists of a video that includes a PowerPoint presentation and material from the FOI Coordinator's Manual.

To facilitate the ability to award a certificate for completing all the modules for the FOI Fundamentals series, assessment questions have been developed that will allow participants to demonstrate their understanding of the concepts covered in each module. Work is now required to input and test these questions in the Learning Management System that houses the FOI Fundamentals Series. A process for awarding a certificate of completion of the series on satisfactory completion of all the module questions will be developed.

Registration for the FOI Fundamentals Series is available online from our [website](#).

A second series of modules based on the Decision Writing workshop is in development.

FOI Wednesday webinars

In March 2022, the OIC commenced a program of FOI Wednesday Webinars. The webinars are available to agency officers and are conducted on the fourth Wednesday of each month. Primarily presented by OIC officers, the 50 minute seminars provide an opportunity to reflect on various FOI topics relevant to officers working in information access.

The topics covered during the year were:

- Dealing with third parties
- FOI in WA in 2021 - How did we fare?
- Open by Design principles
- Section 20 of the FOI Act – refusing to deal with an access application

The webinars are recorded and made available for viewing in the month following the delivery of the webinar. Links to the recordings are also available on request. Recorded seminars can be viewed as a group, providing an opportunity for officers to discuss how the material covered is relevant to their particular agency.

Briefings for community groups

The OIC will consider invitations from non-government groups to provide briefings about rights under the FOI Act. Priority is given to groups that support individuals to understand or exercise their rights under the FOI Act. During the year the OIC provided an FOI briefing for participants completing the Piddington Society's Practical Legal Training.

Online resources

The majority of the OIC's publications are published on our website. These include:

- guides for members of the public and agencies;
- Commissioner's decisions;
- annual reports;

- FOI Coordinator’s Manual; and
- FOI newsletters.

The OIC maintains a suite of online guides for agencies and members of the public. Agency guides assist agencies to meet their obligations under the FOI Act. Guides for members of the public provide guidance about making FOI access and amendment applications and understanding the FOI process. While the guides are created with a particular audience in mind, they are accessible by all who access our website.

Short guides on common issues or questions regarding FOI are available from our home page with drop-down menus for members of the public and for agencies. These short publications are available as printable PDFs using a link on the webpage of each publication. More detailed publications are available from our [Publications](#) page, which is accessible from our home page under ‘Other Resources’. The [OIC guidance](#) page provides detailed information about FOI processes, some common FOI Act exemptions and external review procedures.

The [FOI Coordinator’s Manual](#) is a key resource for anyone seeking to understand FOI processes in greater detail. It is a comprehensive reference tool for FOI Coordinators and is intended to be an evolving resource. It is also a resource used in the online FOI Fundamentals Series available for agency officers.

The OIC drafted a new publication: ‘*Open by Design – FOI and Information Release in WA*’. Published in May 2022, readers were invited to provide feedback on the draft by the end of July

2022. More information about this draft publication is outlined under [Open By Design](#) further in this report.

The review of our existing OIC publications is ongoing and will continue into the next reporting period.

A full list of the publications on the OIC website is available at [Table 10](#).

FOI Newsletter

The OIC published four newsletters during the reporting period in [September 2021](#), [November 2021](#), [February 2022](#) and [May 2022](#).

The newsletter provides an opportunity for the OIC to address current or recurring FOI and information access issues. While the information contained in the newsletter is primarily aimed at agency staff, it includes information that may be of interest to members of the public.

In September 2021, the OIC launched a new format for the newsletter. At the end of the reporting period, there were 306 subscribers: 52.9% of subscribers to the newsletter identify as being from WA State government agencies; 22.2% from local government; and 10.1% as members of the public.

Subscription to the newsletter is available on our [website](#).

Online decision search tool

Decisions of the Commissioner made under section 76 of the FOI Act are published on the OIC's website as soon as practicable after being handed down and provided to the parties. A search facility is available for full decisions whereby users can search for specific exemption clauses, sections of the FOI Act or words and phrases found in the decisions. For these criteria, the facility will search the catchwords found at the beginning of each full decision as per the following example:

FREEDOM OF INFORMATION – refusal of access – lease of premises commonly known as 'Indiana Tea House' – section 30(f) – the requirements of a notice of decision if the decision is to refuse access – section 102 – burden of proof – section 33 – safeguards for affected third parties – clause 4(3) – adverse effect on business affairs – clause 4(7) – public interest – clause 8(1) – breach of confidence – clause 8(2) – information of a confidential nature obtained in confidence.

The Commissioner may issue a decision note, which is not as comprehensive as a full decision but is still captured by the search facility when searching by agency or complainant name, selecting decisions between dates, or a particular outcome.

A Google search is also available that will search the full text of all published decisions.

The decision search facility is a very helpful tool for FOI practitioners to search for precedents relevant to matters with which they are dealing. The Commissioner's decisions are also available and searchable on the Australasian Legal Information Institute (**AustLII**) [website](#) under Western Australia case law. AustLII provides a free online database of Australasian legal materials.

Subscription to receive email notifications of newly published decisions of the Commissioner is available on our [website](#).

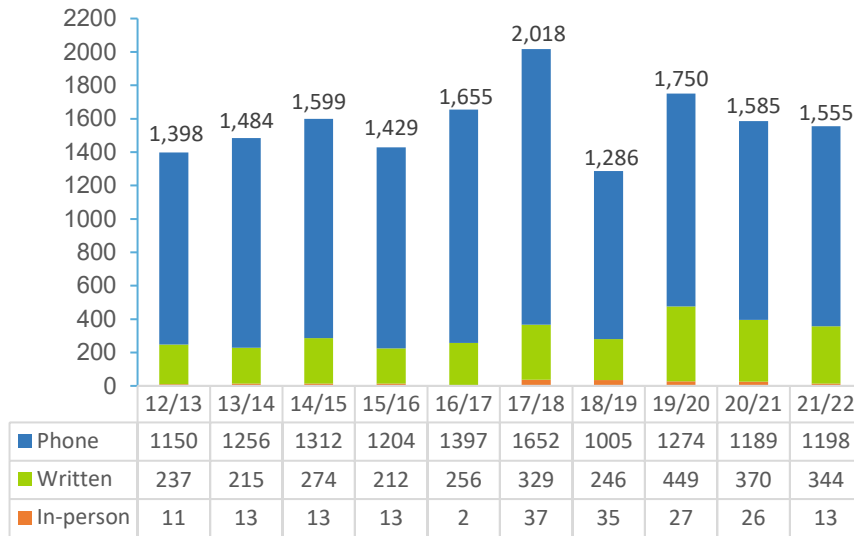
Responding to enquiries

The OIC provides general assistance to members of the public and agency staff regarding FOI issues. The information provided is intended to ensure that members of the public are aware of their rights to access documents under the FOI Act and of the options available to seek access to documents outside of formal FOI processes where appropriate. Agency officers are assisted to understand their obligations under the FOI Act.

Members of the public sometimes misdirect their requests for documents held by particular agencies to the OIC. For example, each year the OIC receives a number of access applications for medical records. People who misdirect their request are advised that under the FOI Act, access applications should be made directly to the agency that holds the documents. Requestors are provided: contact information for the relevant agency; encouragement to contact the relevant agency to check whether a formal access application is required; and information about their review rights if they are dissatisfied with an agency's decision under the FOI Act.

This year the OIC dealt with 1,555 written, phone and in-person requests for guidance or advice, and misdirected requests. This is only 30 less than the 1,585 requests received last year.

Responding to enquiries over 10 years



The OIC does not provide legal advice and does not provide specific rulings on particular issues or sets of facts when the matter is not before the Commissioner on external review. The resources outlined in this report provide information to support agencies and the community to understand their rights and obligations under the FOI Act.

Agency FOI Reference Group

The Agency FOI Reference Group (**AFRG**) is made up of key staff of the OIC and FOI practitioners from 14 agencies that are representative of the different agency types in the sector. The purpose of the AFRG is to promote and advocate for good FOI practice in agencies. Meetings of the group continue to provide an opportunity for the OIC to hear directly about current issues facing agencies relating to FOI. These discussions are

an important contributing factor to the advice and awareness activities of the OIC.

The AFRG met three times during the reporting period. Members of the AFRG are encouraged to share information from meetings with their staff and similar agencies, and to feed information back from those sources to the group.

The members of the AFRG provided valuable feedback regarding the draft publication ‘*Open by Design – The FOI Act and Information Release in WA*’ before it was more widely circulated to the sector for comment.

Information Awareness Month – May 2022

The theme for Information Awareness Month (**IAM**) in 2022 was ‘Building Trust in Information’. IAM is a collaborative event between various bodies within the records, archives, library, knowledge, information and data management communities. The OIC promoted IAM events in its May newsletter. The Commissioner spoke at the Records and Information Management Association (RIMPA) Virtual Conference held on 31 May 2022, which marked the closure of IAM. The theme for the conference was ‘Impactful Information: Recognising the Importance of Information’. The Commissioner spoke about the role that the FOI Act plays to support information access as part of accountable and transparent government, which can build integrity and trust.

International Access to Information Day 28 September 2021

International Access to Information Day (**IAID**) – formerly known as Right to Know Day – is celebrated on 28 September each year and recognises citizens’ rights to access information and reinforces the importance of transparency in building trust in government.

The IAID theme for 2021 was ‘Open by Design’, highlighting the importance of governments considering how to make information accessible from the start – building information access considerations into policy development, projects and service delivery and seeking opportunities to proactively release information.

The Association of Information Access Commissioners (**the AIAC**) issued a [Joint Statement of Principles](#) to support proactive disclosure of government-held information.

The AIAC collaborated to produce a 60 second animation to promote the importance of open government and access to government held information. That video is now featured on the OIC’s website.

‘Open by design’ promotes the development of systematic and well-understood processes for the appropriate release of government-held information

The OIC screened the 2021 Solomon lecture as part of IAID celebrations. The Solomon lecture is an annual lecture organised by the Office of the Information Commissioner Queensland. This year the lecture was delivered by Professor Beth Simone Noveck and entitled ‘Solving Public Problems with Data’. The OIC screening of the 2021 Solomon lecture was followed by an FOI Q&A session with the Commissioner. The OIC screening event was attended by 38 WA State and local government officers.

The OIC also promoted on its website virtual events held by other information access jurisdictions as part of IAID celebrations.

Open by Design Principles

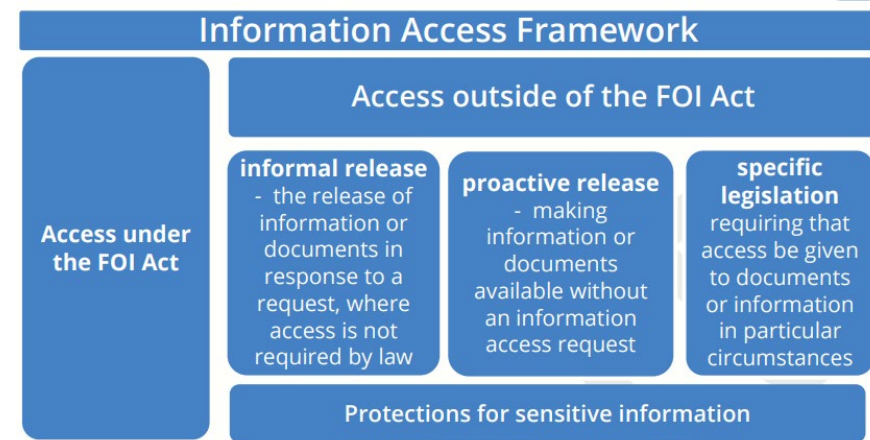
In this reporting period the OIC has particularly encouraged agencies to consider the ways that they can give access to information outside of the formal provisions of the FOI Act.

As already noted, as part of IAID celebrations the Commissioner joined with Information and Access Commissioners from other jurisdictions to produce a [Joint Statement of Principles](#) to support proactive disclosure of government-held information. Our office has developed a publication, ‘Open by Design – FOI and Information Release in WA’, intended to assist and encourage agencies to create appropriate open by design policies and processes to facilitate effective information release beyond the formal access procedures outlined in the FOI Act.

This was published as a draft in May 2022, with feedback sought regarding its usefulness and effectiveness. After considering the feedback received, it will be finalised and published in late September 2022.

The following are some of the key points noted in the publication.

- Systematic and well understood processes for appropriate release of government-held information promotes open government and advances our system of representative democracy.
- Since the enactment of the FOI Act, WA Information Commissioners have encouraged WA State and local government agencies to consider the benefits of releasing information either proactively or informally (outside of the formal processes of the FOI Act) and reminded them that formal processes of the FOI Act should be used as a last resort.
- Agencies should use their knowledge of the information they hold, and the sensitivities associated with that information, to assess the kinds of information that is suitable for proactive release and informal/administrative release.
- Agencies are encouraged to create and publish an Information Access Framework that clearly outlines the various pathways by which information and documents held by the agency can be accessed by the public: see the following model.



The publication includes a table that contrasts and highlights some of the differences between access rights under the FOI Act and access via agency proactive and informal or administrative release.

FOI services for Indian Ocean Territories

The Australian Government has responsibility for the external territories of [Christmas Island](#) and the [Cocos \(Keeling\) Islands](#), collectively known as the Indian Ocean Territories (IOT). Through the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**DITRDCA**), the Australian Government facilitates the delivery of services normally expected from a State government.

State-type services are delivered through Service Delivery Arrangements (**SDAs**) with the WA Government, directly by the private sector under contract, or by the DITRDCA. Information about the SDAs existing in the Indian Ocean Territories is available on the DITRDCA [website](#).

As a result of an SDA negotiated during the reporting period, as of 1 July 2022 the Commissioner will provide independent merit review of decisions made by WA Government agencies and IOT local governments on access applications and requests to amend personal information under the FOI Act.

The Commissioner will also assist WA Government agencies, IOT local governments and community members to understand their rights and obligations under the FOI Act.

Online FOI access application form

The online FOI access application form allows members of the public to submit an online access application to the State government agencies that have their website hosted on the WA.gov.au site.

While a form is not required to make a valid access application under the FOI Act, it can be preferred by applicants because it provides a structure to their access application. An online form also provides an easy way to lodge the FOI access application with the appropriate agency.

The online form is preceded by information to assist applicants to understand their rights under the FOI Act. Applicants are encouraged to contact the relevant agency before lodging their application because in many cases a formal FOI access application may not be necessary – in some cases, the documents to which access is being sought may be available outside the FOI process. The relevant FOI contact for each agency is also provided.

The online form is structured to allow applicants to provide the information needed to make a valid access application under

the FOI Act, while also allowing and encouraging the applicant to provide additional information to assist agencies clearly identify the documents requested – and the information that the applicant does not want – so that the application can be dealt with effectively and efficiently.

As at 30 June 2022, the form is able to be used to make access applications to ten agencies and to all WA Ministers.

Freedom of Information (FOI) Access Application

All fields marked with * are required and must be filled.

Agency

Your application should be made to the agency that you think holds the documents you are seeking. Complete a separate request for each agency from which you are seeking documents.

Use the online FOI access application to submit your application to one of the Western Australian government agencies listed below.

When it receives your application, the agency will assess whether you have made a valid FOI access application. It will advise you if further information is required.

For other WA government agencies select 'Agency NOT listed'. You will be given information about how and where to send your written FOI access application.

Which agency are you requesting information from? Make one request per agency. *

Please select one agency

Our workplace

Strategic Goal: Foster a supportive and collaborative workplace that advances staff capabilities and encourages innovation and creativity

Ensured that our organisational structure promotes open lines of communication

- Coordinated a review of OIC's structure and organisation
- Appointment made to senior position following vacancy

Cultivated a positive organisational culture that supports personal wellness

- Continued support of a Mental Health First Aid Officer
- Updated training provided to the Occupational Health and Safety representative
- Promotion of the Employee Assistance Program

Explored flexibilities that enhanced working arrangements and professional development

- Working from home policy reviewed
- Approval given for staff to engage in external secondments
- Opportunities provided for staff to act in higher level positions
- Recognition of staff undertaking additional duties
- Supporting continuing professional development (CPD) requirements for legal staff
- Approval given for staff to attend training, events and other development opportunities (105 registrations)

Strategic Goal: Sound information systems that support our operational needs

Used technology to improve efficiency and accessibility to our services

- Replacement of desktop computers with laptops
- Development of a secure virtual private network connection for remote access
- Arrangements made for a vulnerability assessment of network infrastructure and programs
- Participation in an IT audit by the Office of the Auditor General

Implement a case management system that meets our reporting needs / Transition to an electronic records management system to better manage our record-keeping obligations

- Preliminary research undertaken

Organisational review

The last review of the OIC's organisational structure was in 2004. It has been acknowledged in current and past strategic plans that a review of the OIC's structure was required to ensure there is a clear and functional reporting structure and that all aspects of the OIC's functions and processes are being managed efficiently.

The Commissioner engaged consultants, The Nexus Network (**Nexus**), to conduct an organisational review in early 2022.

At the time of reporting, preliminary outcomes have been provided by Nexus for comment before their report and recommendations are finalised. Thorough consideration of the recommendations will occur during 2022/23.

Flexible working arrangements

As reported last year, the OIC's Working From Home Policy was reviewed and revised in September 2021. The opportunity to work remotely continues to be an option for staff after due consideration by the Commissioner on the merits of each request.

In December 2021, the effectiveness of the OIC's remote working processes and systems were tested with an arrangement for all staff to work remotely simultaneously for one day. The trial was successful and provided reassurance in early 2022 when the infection rates of COVID-19 increased in Western Australia, directly impacting our staff.

In the coming year, new laptops that were purchased in the previous period will be fully functional with a new virtual

private network (VPN) facility installed to further enhance security and direct remote access to the OIC's network.

Career development

Due to the small size of the OIC, there is limited scope for career development within the organisation. It is recognised that this can pose a risk to job satisfaction and staff retention.

During the year, there was continued opportunity for staff to gain experience through higher duties arrangements and allocating special projects.

In addition, early in the period two staff members were given approval to commence six and three month secondment arrangements with external agencies. Long-term absences can be difficult to cover in a small agency where there is limited scope to cover or share the workload internally. However, serious consideration is always given to each secondment request due to the restricted opportunities in-house.

Information technology

The OIC has for some time been aware of the need to update our information technology infrastructure and vital programs. This is reflected in the 2020-2023 strategic plan where a new strategic goal was added: *invest in systems that support our operational needs*. There are four objectives under this goal:

1. Use technology to improve efficiency and accessibility to our services.
2. Implement a case management system that meets our reporting needs.

3. Transition to an electronic records management system to better manage our record-keeping obligations.
4. Refine, review and improve our knowledge management system.

These are major initiatives that will have a high impact on the OIC's operations. Allocating resources to work on these projects has been challenging, particularly during the peaks of COVID-19. Nevertheless, preliminary work has begun to source a suitable replacement for the case management system and an electronic document management system, with finalisation of these two projects scheduled for the end of 2023.

In preparation for these changes and to further enhance secure remote working arrangements, laptops were purchased during the year to replace desktop PCs. The OIC has also been working with our GovNext cloud and internet gateway providers, Datacom, to set up secure virtual private network access from the new laptops to the network.

During the reporting year, two assessments of the OIC's IT systems and processes were conducted: a vulnerability assessment by the Office of Digital Government (**ODG**); and an information systems audit by the Office of the Auditor General (**OAG**). These reviews have provided a framework that will ensure the necessary policies, procedures and security measures are in place prior to the planned upgrades to key information technology infrastructure.

The assistance and continued support provided by the ODG and the OAG during and after each of these reviews has been helpful and very much appreciated.

Vulnerability assessment by the Office of Digital Government

As reported last year, the OIC liaised with the ODG to improve the security of OIC's systems. ODG performed a vulnerability assessment of our operating system and networks to identify deficiencies and make recommendations for their improvement. A scan was performed on workstations and servers and the results were provided in July 2021. Recommendations included the replacement of the current case management system and moving to cloud-based software solutions.

A follow up assessment is scheduled early in 2022/23 to review progress on the recommendations made last year.

Information Systems Audit by the Office of the Auditor General

In February 2022 the OIC was selected by the OAG to be audited in their annual audit of information technology controls in agencies. Their audit focussed on policies and procedures; management of IT risks; information security; business continuity; change control; and physical security.

The OIC will focus on all the matters raised in the audit in the coming year. Advice and resources have been provided by the OAG and the ODG to assist with these projects.

Occupational safety and health

The Commissioner is committed to providing a safe and healthy work environment and maintaining the safety and health of all staff, contractors and visitors. Workplace safety and health is about making sure staff, contractors and the community feel safe and supported when at work and when visiting the office. The OIC's OSH Commitment statement reflects this and was last updated in 2020.

The OIC has a fully accredited Health and Safety Representative who was nominated by election. Additional training was provided during the year to ensure this officer was familiar with provisions in the new *Work Health and Safety Act 2020* (WA). The OIC also supports a staff member to maintain their accreditation as a Mental Health First Aid advocate.

A standing agenda item at monthly staff meetings for workplace health and safety matters provides the opportunity for issues to be discussed and concerns to be raised by staff.

Injury management

The OIC has injury management documentation in place that requires review. Updated injury management information was requested and provided by the Insurance Commission of WA during the year. A review will be finalised in the coming year to update current documentation and ensure the OIC's injury management system remains relevant and compliant.

No injuries have occurred at the OIC since 2008. The required injury management and performance table is under the [OIC Statistics](#) section.

Risk management

The OIC has an established Risk Management Steering Committee (**RMSC**). During the year, the following outcomes were achieved.

Compulsory vaccination policy

Following the mandatory vaccination policy issued by the Government in October 2021, the OIC developed an in-house policy regarding staff attendance to the office in the event of a lockdown. The OIC did not have any staff that were subject to mandatory staff vaccination. However, vaccination was required if a staff member was to attend the office during a Government issued lockdown. While there are no dedicated positions within the OIC that strictly required attendance and all possible efforts have been made (and continue to be made) to ensure staff can work remotely, there is always the potential for the requirement to physically attend the office. The OIC's policy stipulates that, on any occasions that it was necessary for a staff member to attend the office, the staff member must provide the required vaccination information to the Commissioner.

Cybersecurity

As reported previously, in July 2021 a [vulnerability assessment](#) was conducted by the ODG on the OIC's workstations and servers. The RMSC considered that the technical aspects of the findings would require additional expertise to work through. A temporary IT support officer was contracted in November 2021 to assist with the

implementation of the ODG's recommendations and to attend to other IT matters.

Test of whole of office remote working

The RMSC decided it was important to regularly test the remote working capability of the office by scheduling a whole of office remote working day (noted elsewhere in this report). This is intended to refresh the capability of staff to work remotely, particularly for those who do not do so regularly. It also provides an opportunity for the RMSC to receive feedback and remedy any shortfalls to the remote working arrangements in place.

A remote working test was successfully carried out in December 2021.

Review of the OIC's risk management framework

As reported last year, the RMSC agreed that the OIC's risk management framework required review. External consultants, Nexus, were engaged to review the OIC's management of risk and make recommendations for improvement to ensure compliance and best practice.

Nexus provided their report including recommendations in June 2022. The RMSC are committed to addressing these recommendations in the coming year.

Compliance audits

Internal audit

The OIC engaged Assurance Advisory Group to conduct the annual internal audit of the OIC's finance and human resource processes and controls for the reporting year.

The final report indicated a satisfactory result, with progress being made in several areas identified in the previous years' audit. Some of the previous recommendations are yet to be progressed or finalised, which will be a focus for the coming year.

Internal Audit Committee

The OIC's Internal Audit Committee was formed in 2021 and consists of two members of OIC staff and is chaired independently by a suitably qualified officer from an agency external to the OIC. The Committee met twice during the reporting year to review the OIC's previous internal audit results – and the progress towards the recommendations – and to finalise the Audit Committee Charter.

External audit

The audit opinion from the Auditor General identified no reportable issues in the financial statements, key performance indicators or controls for 2021/22.