



Office of the Information Commissioner

Freedom of information for Western Australia



ANNUAL REPORT 2022/23

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

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



Office of the
Information Commissioner

Freedom of information for Western Australia

11 October 2023

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

ANNUAL REPORT TO 30 JUNE 2023

In accordance with section 63 of the *Financial Management Act 2006* I hereby submit my report for the reporting period ended 30 June 2023.

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

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

Catherine Fletcher
INFORMATION COMMISSIONER

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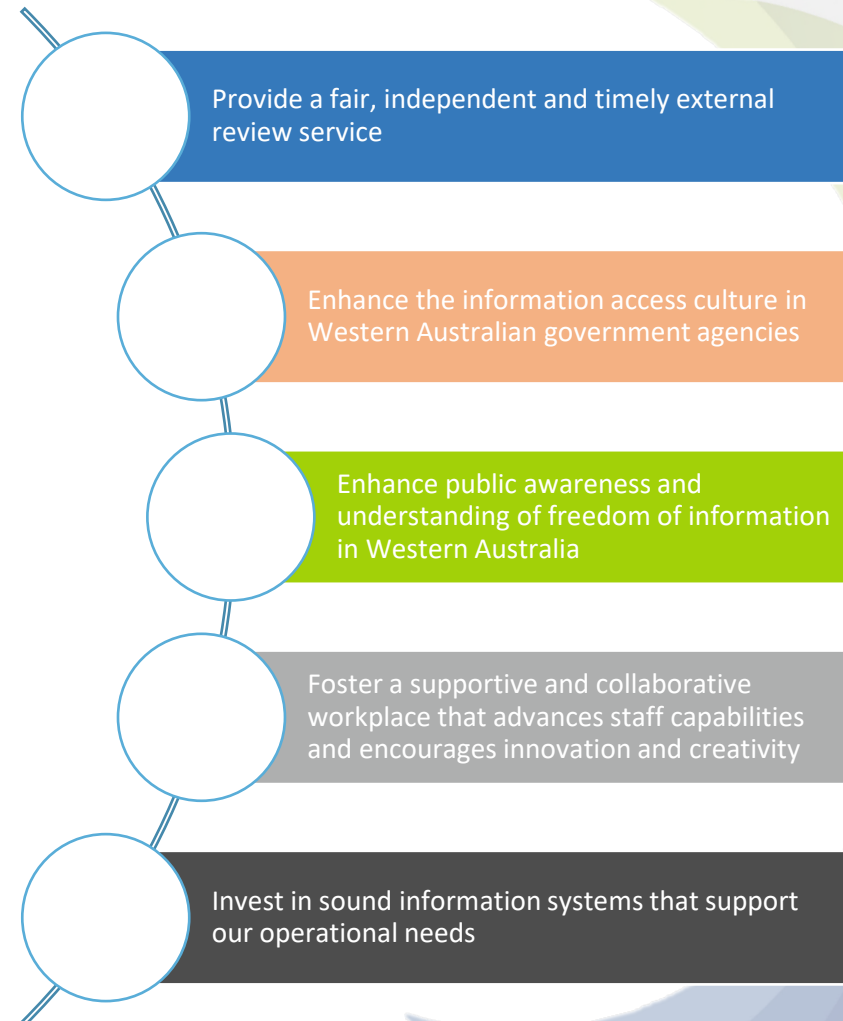
About this report

Welcome to the annual report of the Office of the Information Commissioner (**the OIC**) for 2022/23.

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

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

Strategic goals



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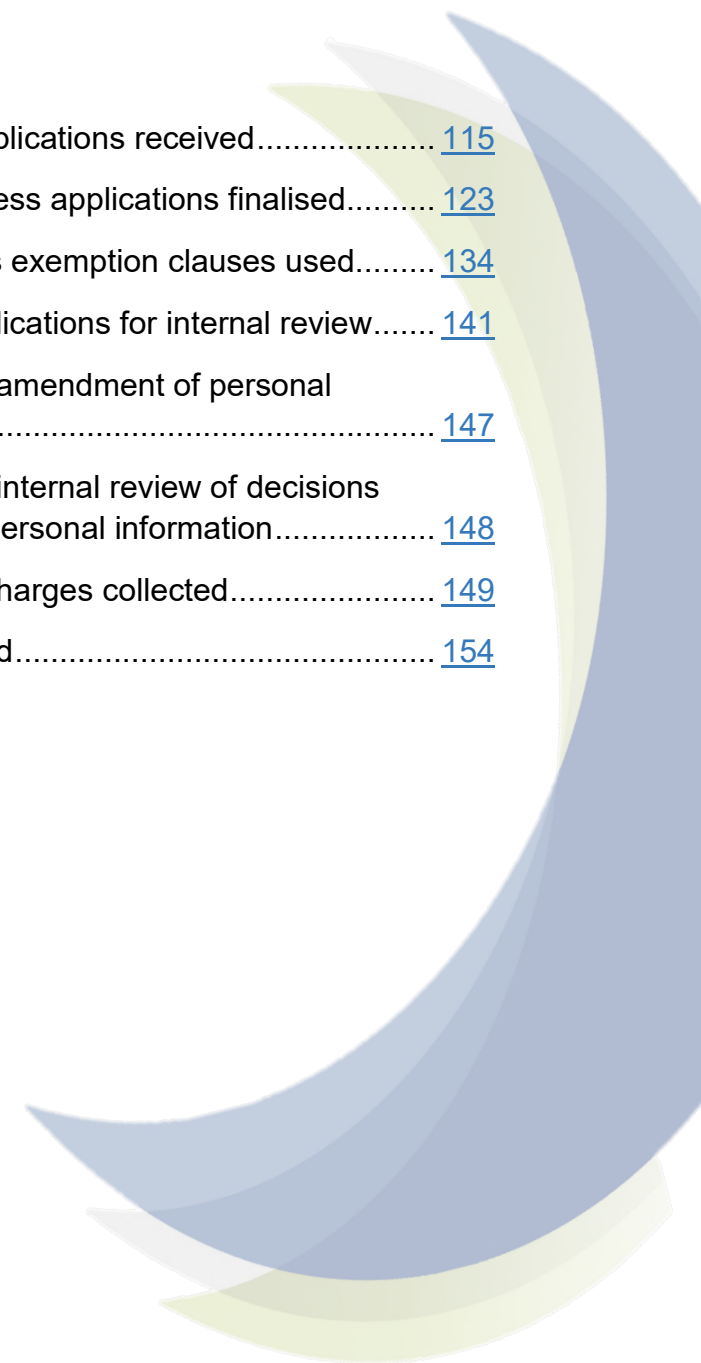
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Overview

What is Freedom of Information?

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

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

In the absence of State privacy legislation in Western Australia, the FOI Act provides a limited mechanism for the protection of government-held personal information from disclosure under the FOI Act and also provides a means to ensure any such personal information is accurate, complete, up-to-date and not misleading. The FOI Act is supported by the *Freedom of Information Regulations 1993* (WA).

Anyone has the right to lodge an FOI application to WA State and local government agencies and Ministers (collectively referred to as 'agencies') requesting access to documents, or

to apply to have their personal information amended if it is incomplete, inaccurate, out-of-date or misleading. Agencies are then obliged to make a decision on access or amendment applications in accordance with the FOI Act.

Role of the Information Commissioner

The office of Information Commissioner (**the Commissioner**) is created by the FOI Act and is appointed by the Governor. The Commissioner is independent of executive government and reports directly to the Parliament and not to, or through, a Government Minister. The Attorney General is the Minister responsible for the administration of the FOI Act, but has no express role under the legislation.

The main function of the Commissioner is to provide independent external review of decisions made by agencies under the FOI Act in respect of applications for access to documents and amendment of personal information. Additional functions include ensuring that agencies and the public are aware of their responsibilities and rights under the FOI Act. The Commissioner also recommends legislative or administrative changes that could be made to help the objects of the FOI Act be achieved.

The Commissioner is an ex-officio member of the State Records Commission.

Executive Summary

Information Commissioner's Report



I am pleased to present the 30th annual report of my office and my fifth report as Commissioner.

Under the **FOI Act**, this report must deal with both the operation of the FOI Act and the operations of my office.

The Parliament, by enacting the FOI Act over 30 years ago, enshrined in law

a right to access the documents of State and local government agencies, which includes Ministers, subject to limited exceptions, as well as a right to apply to amend personal information in government documents in certain circumstances. Significantly, the objects of the FOI Act are to provide greater public sector accountability and to enable the public to more effectively participate in government.

Freedom of information laws, when they operate effectively, build public trust. Public trust is a fundamental requirement for effective democratic government.

Enhanced disclosure of government information promotes discussion and a better understanding of government decision-making. It also deters corruption, can counter misinformation and disinformation and can significantly improve government transparency and public trust.

During 2023, the FOI Act and my office celebrate 30 years of operation. This milestone anniversary is an important

opportunity to reflect upon the state of information access in the WA public sector, as well as how the FOI Act and my office are serving the Parliament and the community.

In a positive development, I am pleased to see that, in December 2022, the State Government committed to introducing State privacy legislation - this is a reform that is long overdue in Western Australia.

FOI in the sector

There is a continuing trend of an increasing number of FOI applications, with 21,241 applications made to agencies this year. This represents almost 24% more applications than a decade ago in 2012/13 when there were 17,175 applications and more than a five-fold increase since the first full year of operation of the FOI Act in the 1994/95 reporting period when there were 3,323 applications.

Applications to health-related agencies continue to dominate with 12,048 applications being made in this reporting period (with generally very high rates of full or partial disclosure provided across those agencies).

It is pleasing to note that 86.6% of the FOI decisions made by agencies in the reporting period resulted in some form of disclosure to the access applicant, up from 85.3% last year.

When access is refused, the exemption that protects personal information (clause 3 of Schedule 1 to the FOI Act) continues to be, by far, the most commonly relied upon exemption. This is a consistent trend since the FOI Act came into operation and is expected to continue in the future. Details of all

exemption claims made by agencies are described in [Table 14](#).

The most recent results of the *National Metrics about Information Access Rights* show some clear trends relating to FOI use in this State. This includes consistently more FOI applications being made in WA on a per capita basis than any other jurisdiction; one of the highest rates of disclosure of information (in full or partial form); and consistently the lowest rate of external review applications.

As I noted last year, in my view, this data suggests that agencies are still directing too many requests for non-contentious information to formal FOI processes instead of utilising more pro-active information release processes.

FOI applications should be a last resort and reserved for particularly sensitive or contentious government-held information. Among other benefits, the pro-active disclosure of non-sensitive government information reduces the FOI compliance burden on agencies and enhances government transparency.

The results from the 2023 *Information Access Study* show that an overwhelming majority of people (88%) view access to government information as very or quite important. Of concern, there is a noticeable decline in WA with success in obtaining access to government information: from 91% of respondents who attempted access in 2019, to 88% in 2021, to 77% in 2023. 78% of respondents in WA indicated that it was important to them to know when government uses technology to assist in decisions that affect the public. These results are important reading for the public sector.

Operations of my office

Over a 10-year period, the number of external review applications made to my office has increased 22.5% between the first and second five year periods. Over the same time, comparing those two periods, the rate of finalisation of external reviews by my office has increased by 5.5%. (see page [26](#))

This imbalance has led to a growing backlog of external reviews which my office is working hard to address. Pleasingly, this year my office received some finite funding to recruit three additional staff to assist with our backlog and funding to make improvements to our ICT infrastructure.

In addition to my main function of providing independent merits review of agency FOI decisions, the FOI Act also requires my office to provide advice and awareness services, to ensure that the public and agencies are aware of rights and obligations under the FOI Act. The services provided include responding to requests for information about FOI processes and rights, providing training and briefings and producing publications. Despite the ongoing limited staffing resources for this service, my office continues to make a significant contribution to FOI awareness and skills in the State.

During the reporting period, my office completed two big projects, being an organisational review and development of a comprehensive Risk Management Framework. This work has helped my office to address risks and to develop an improved organizational structure, which took effect from 1 July 2023.

In addition, the past 12 months have involved extensive planning and preparations for our 30 year celebrations. This includes a sector-wide FOI in WA conference, to be held in November 2023, and a celebratory morning tea held in July 2023, which was attended by FOI practitioners, the Attorney-General and other colleagues across the sector.

Once again, I sincerely thank my staff for their tireless hard work to support me in my role and to promote the principles of government accountability and transparency. We continue to strive to provide a respected and reliable service to the Parliament and the people of Western Australia.



Catherine Fletcher

Information Commissioner

Office of the Information Commissioner (WA)

2022/23 highlights



156

*External reviews
received*



139

*External reviews
finalised*



94

*External reviews
resolved by
conciliation*



164

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



15

*Published decisions of
the Commissioner*



1,064

*Participants in OIC
briefings, training or
remote education
sessions*



1,038

*Enquiries from the
community answered*



375

*Enquiries from State
and local government
answered*

About the Office of the Information Commissioner

As at 30 June 2023, the Commissioner was supported by 14 staff and two temporary officers in the OIC. Three areas operate to assist the Commissioner in meeting the objectives of the FOI Act:

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



Performance management framework



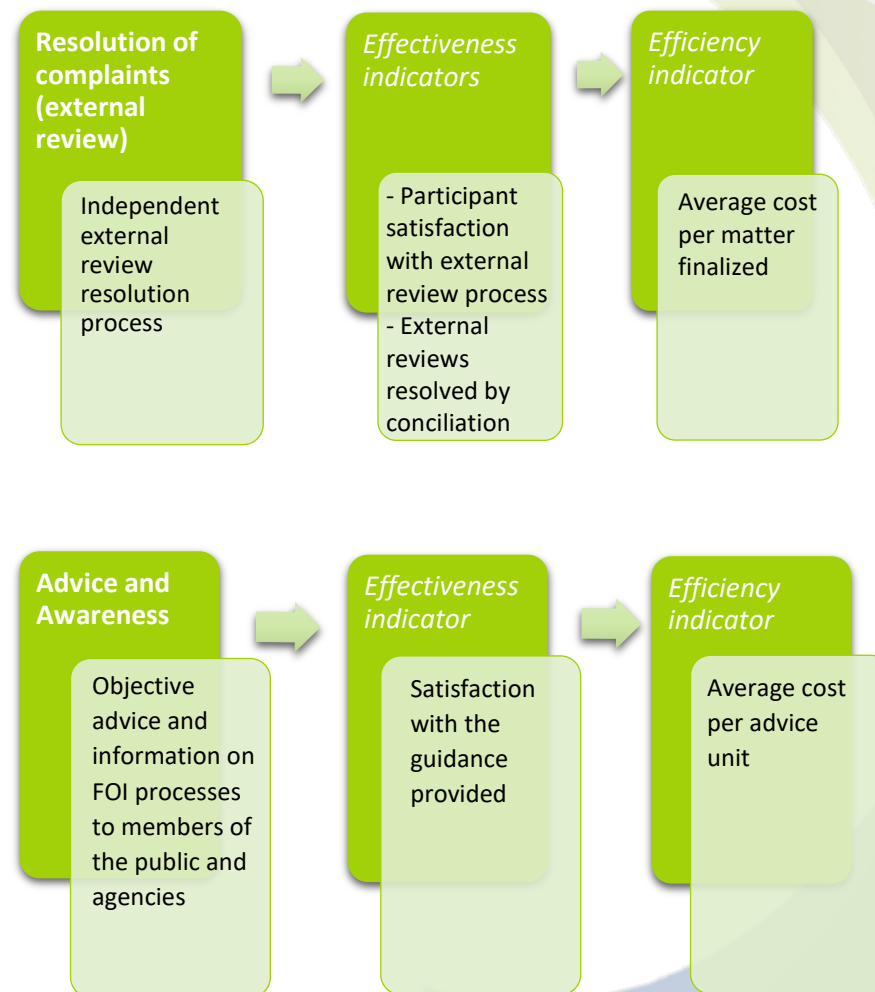
1. Resolution of complaints (external review)
2. Advice and Awareness

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

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

The objects of the FOI Act are to enable the public to participate more effectively in governing the State and to make the persons and bodies responsible for State and local government more accountable to the public. These objects promote transparency and accountability in government, a concept that contributes to the broader government goal of safe, strong and fair communities.

Outcome-based management framework



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

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

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

Administered legislation

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

Other key legislation impacting on the OIC's activities

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

- *Minimum Conditions of Employment Act 1993*
- *Procurement Act 2020*
- *Public Interest Disclosure Act 2003*
- *Public Sector Management Act 1994*
- *Salaries and Allowances Act 1975*
- *State Records Act 2000*
- *Work Health and Safety Act 2020*