



# 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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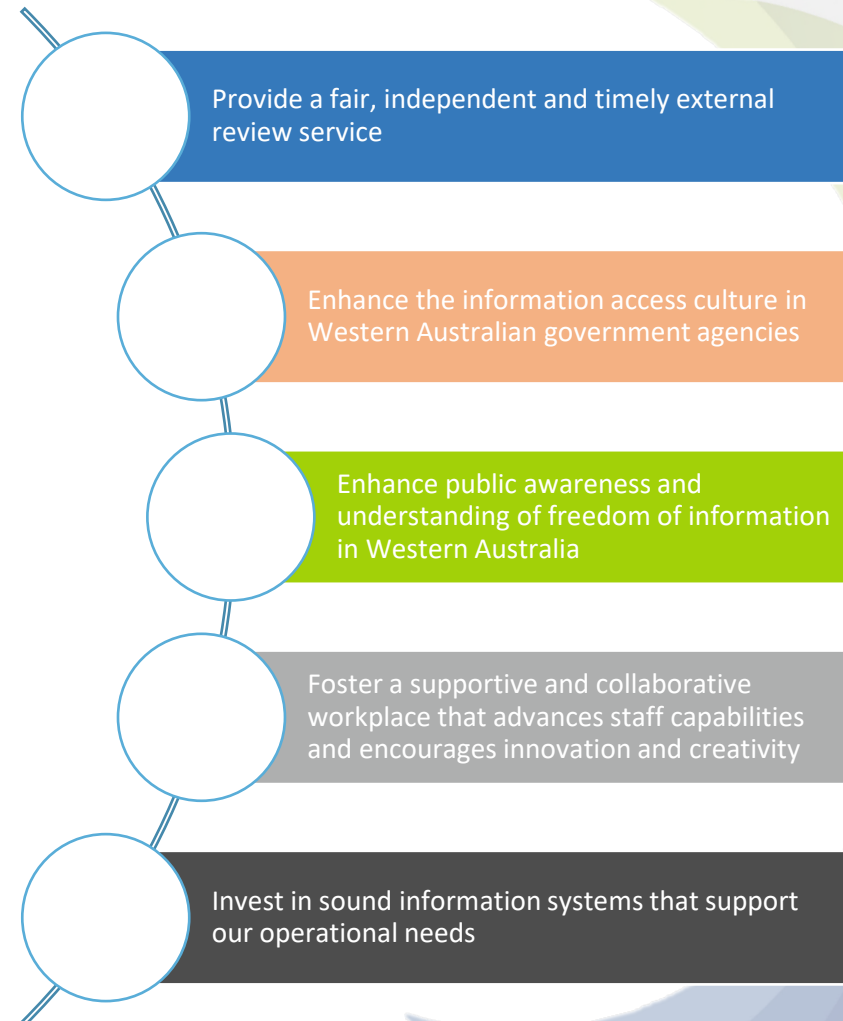
## About this report

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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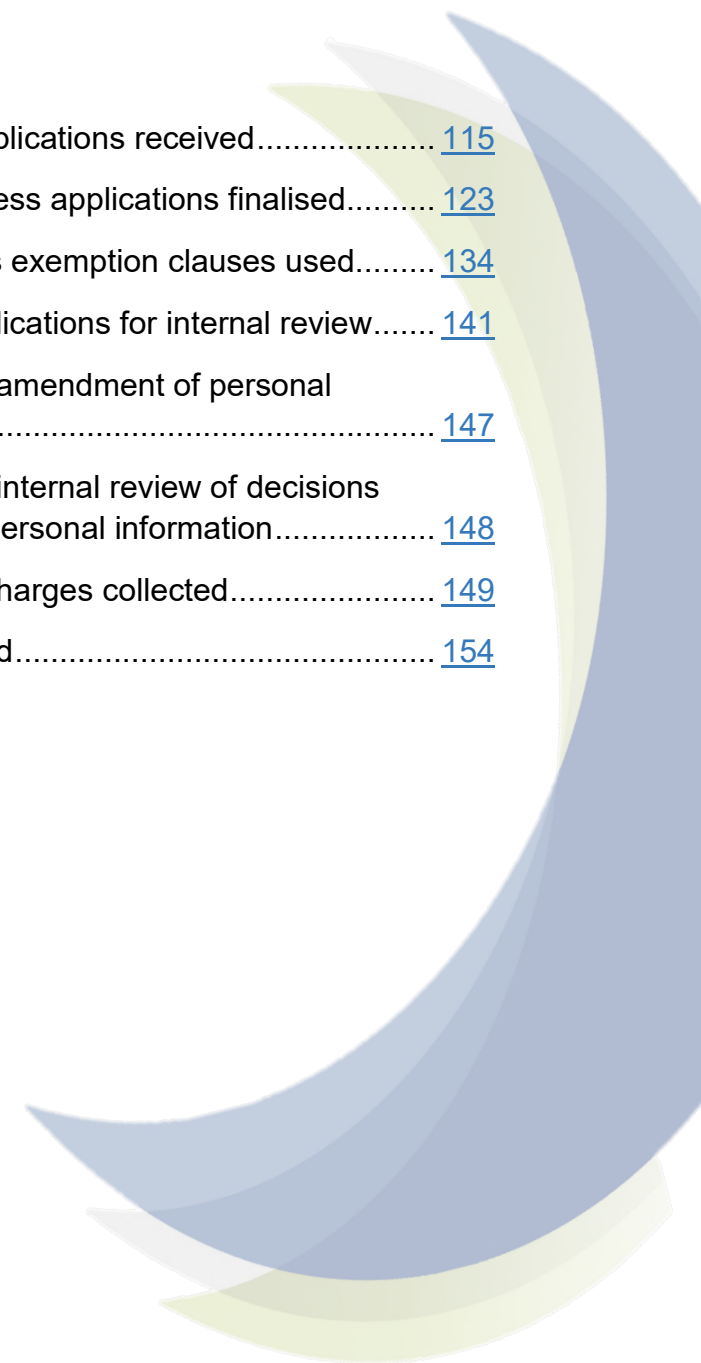
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# Operational Performance

## Snapshot of financial and operational performance indicators

	Target \$000	Actual \$000	Variation \$000
Total cost of services	2,425	2,862	437
Net cost of services	2,421	2,784	363
Total equity	681	18	(663)

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.

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

	Target <sup>(1)</sup>	Actual	Variation
<b>Resolution of Complaints</b>			
<i>Key effectiveness indicators:</i>			
Participants satisfied with complaint resolution and external review processes	85%	85%	0%
Applications for external review resolved by conciliation	70%	68%	(2)%
<i>Key efficiency indicator</i>			
Average cost per external review finalised	\$8,472	\$10,085	\$1,613
<b>Advice and Awareness</b>			
<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	\$348	\$370	\$22

(1) As specified in the Budget Statements.



## External Review

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

*Provided a fair, timely and effective formal external review process*

- Streamlining the external review process
- Increased monitoring of progress and allocation of matters
- 11 conciliation conferences conducted
- 139 external reviews finalised
- 67.6% of external reviews finalised by conciliation
- 84.5% participant satisfaction rate

*Provided an efficient and effective early resolution process*

- Informal resolution processes, encouraged across the whole external review team.
- 36.7% of external reviews resolved in less than six months.

*Provided clear decisions, with reasons, to best inform the public*

- 15 decisions published
- 40 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 resolve an external review by issuing a binding determination.

It remains the focus of the OIC to ensure that the conduct of external review proceedings are not unduly legalistic or formal, preferring instead to negotiate a conciliated outcome between the parties rather than issuing a formal determination.

### Conciliation

Conciliation is an important element of the external review process and can result either in resolution of the external review or clarification or narrowing of the issues in dispute. This has the effect of making the external review process more efficient for those matters that require further review.

When any new external review is assessed and assigned to an officer to deal with (who acts on behalf of the Commissioner under certain delegated powers), consideration is given to any procedural options available to resolve the matter.

Those options include discussions with the parties by telephone, by email or in person; an officer providing the parties with their assessment of the merits of the matter and inviting either or both parties to reconsider their position; and conciliation formal conferences conducted by the OIC, attended by both parties. These options represent different methods of conciliation utilised by the OIC to facilitate conciliated outcomes and the informal resolution of matters without a formal determination by the Commissioner.

The extent to which the various procedural options are pursued will vary, depending on the particular circumstances of each matter. The nature of the information requested and the various interests of the parties means that conciliation is not always achievable.

As reported in the OIC's 2020/21 annual report (at page 11), during that year it was decided not to convene any formal conciliation conferences. This decision has been reviewed and conciliation conferences recommenced in August 2022. During the current reporting period, 11 conciliation conferences were conducted, with all but one of those matters either resolved at the conference or resolved after the conference as a result of actions agreed by the parties at the conference.

Following this initial high rate of success, the OIC intends to increase the number of conciliation conferences conducted. However, the scheduling of conferences requires significant administrative support, which has been lacking in light of staff movements.

Despite the early success of the Early Intervention Program (**the EIP**) in 2019/20 and 2020/21, this program was reviewed during the year and the decision made to spread the work of the small team working in the EIP through the external review team as a whole. This has encouraged greater use of informal resolution for all external review matters.

This year's conciliation rate was 67.6%, which is marginally less than our yearly target of 70%. Of the 139 external reviews finalised in 2022/23, 94 were finalised by conciliation.

The annual conciliation rate of external reviews finalised is one of the OIC's key performance indicators. Full details of the

OIC's performance indicators are outlined in the [Key Performance Indicators](#) section of this report.

### **Conciliation case studies**

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

#### **Agency reconsiders its decision and gives access to documents**

The complainant applied for documents that were prepared by consultants for the agency. The agency refused access to the documents under clause 6(1) of Schedule 1 to the FOI Act on the basis that disclosure of the documents would reveal the agency's deliberative processes. The complainant applied to the Commissioner for external review of the decision.

After considering the material before the Commissioner, an officer of the OIC provided the agency with their initial assessment of this matter. It was the officer's initial assessment that the agency had not established that disclosure of the requested documents would, on balance, be contrary to the public interest, as required by clause 6(1)(b).

The agency accepted the officer's initial assessment and gave the complainant access to edited copies of the documents with certain information deleted under clauses 4(2), 6(1) and 8(2) of Schedule 1 to the FOI Act. The complainant advised the OIC that the access they had been given did not resolve the matter.

The Commissioner provided the parties with her preliminary view, which was that the information deleted from the documents was not exempt under clauses 4(2), 6(1) or 8(2). The agency accepted the Commissioner's preliminary view and gave the complainant access to the documents in full. As a result, there was nothing remaining in dispute for the Commissioner to determine and the matter was resolved.

#### **Agency accepts initial assessment and gives complainant edited documents**

The complainant applied to the agency for documents relating to investigation reports and allegations of staff misconduct. The agency initially refused access to the requested documents on the basis that they were exempt under clauses 3(1) and 8(2) of Schedule 1 to the FOI Act.

After making preliminary inquiries and considering the material before the Commissioner, an officer of the OIC advised the agency that it was their initial assessment that the requested documents were not exempt in full under clauses 3(1) and 8(2). It was also the officer's view that a number of the documents identified by the agency were not within the scope of the complainant's access application.

The agency accepted the officer's initial assessment and gave the complainant access to edited copies of the documents with personal information about individuals other than the complainant deleted. The complainant was satisfied with the access provided and the matter was resolved.

Complainant accepts initial assessment that further documents could not be found or do not exist

The complainant applied for external review of an 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.

Additionally, the complainant sought review of the agency's decision to delete information from a document on the basis that it was outside the scope of the request.

The OIC made inquiries with the agency regarding the searches conducted to locate the requested documents.

After considering the material before the Commissioner, an officer of the OIC advised the complainant that it was their initial assessment that further documents either could not be found or did not exist. It was also the officer's assessment that the information deleted from the document was not within the scope of the complainant's access application.

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

Matter resolved by notation to complainant's medical records

The complainant applied for external review of the agency's decision not to amend their personal information in medical records held by the agency.

After reviewing the material before the Commissioner, an officer of the OIC advised the complainant that the agency's decision to not amend their personal

information appeared to be justified. In an effort to conciliate the matter, the officer asked the complainant if they would be satisfied with the agency making a notation or attachment to their medical records.

The complainant advised that the matter would be resolved if the agency made a notation to their medical records. After discussion with the OIC, the agency made a notation and the matter was resolved.

Matter resolved after agency undertakes further searches and locates additional document

The complainant applied for access to certain documents regarding training undertaken by particular officers of the agency. The agency gave the complainant access to edited copies of two documents with information deleted under clause 3(1) of Schedule 1 to the FOI Act.

The complainant applied to the Commissioner for external review of the agency's decision, claiming that further documents should have been identified.

At the request of the OIC, the agency conducted further searches and located an additional document, which it provided to the complainant. After considering the material before the Commissioner, an officer of the OIC advised the complainant that, in her view, the agency had now given them access to all the requested documents.

The complainant advised the OIC that they did not wish to continue the external review and the matter was resolved.

### Agency reconsiders its decision and gives access to the requested document

The complainant applied to the agency for access to a particular document regarding a staffing matter.

The agency refused the complainant access to the requested document under section 26 of the FOI Act on the basis that the requested document did not exist. The agency claimed that, in order to meet the terms of the complainant's access application, it would need to create a new document, which is not required by the FOI Act.

During the course of the external review, the agency reconsidered its position and no longer maintained that the requested document needed to be created. Rather, the agency conceded that the requested document did exist as a document of the agency and gave the complainant access to the requested document, excluding certain information previously provided.

The complainant was satisfied with the access given and the matter was resolved.

### Complainant accepts initial assessment and discontinues external review

The complainant applied to the agency for access to documents relating to a number of third parties, including their child.

The agency gave the complainant access to edited copies of documents with a small amount of information deleted under clause 8(2) of Schedule 1 to the FOI Act

on the basis that disclosure would reveal confidential communications.

The complainant applied to the Commissioner for external review of the agency's decision.

After considering all of the material before the Commissioner, an officer of the OIC provided the complainant with their initial assessment, which was that the information deleted from the requested documents was personal information that was exempt under clause 3(1) of Schedule 1 to the FOI Act.

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

### Agreement reached at a conciliation conference

The complainant applied for external review of the agency's decision to refuse to deal with their access application under section 20 of the FOI Act on the basis that dealing with the application would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The Commissioner required the parties to attend a conciliation conference.

At the conference, the agency agreed to deal with the complainant's access application in revised terms proposed by the complainant. As a result, the external review was resolved.



Matter resolved following provision of further information

The complainant applied to the agency for a copy of correspondence and plans relating to a neighbouring property. The agency refused access to the requested documents under section 23(2) of the FOI Act, claiming that all of the documents were exempt under clause 3(1) of Schedule 1 to the FOI Act and that it was not practicable to give access to an edited copy.

The Commissioner required the parties to attend a conciliation conference.

At the conference, the agency agreed to give the complainant certain information regarding compliance and approval issues that were of most concern to the complainant. Following receipt of that information, the complainant advised the OIC that they no longer wished to proceed with the external review and the matter was resolved.

Matter resolved following negotiation between the parties

The complainant applied for external review of the agency's decision to give access to an edited copy of documents, and to refuse access to other documents.

As a result of discussions with the OIC, the agency reconsidered its position and engaged in negotiations with the complainant to resolve the matter. The agency subsequently gave the complainant access to a document, edited as agreed by the parties.

The complainant confirmed that this resolved the matter.

Access to consultant's report by way of inspection agreed by parties

The complainant applied to the agency for access to a report prepared by a consultant (**the third party**). The agency refused access to the report, claiming it was exempt under clause 6(1) of Schedule 1 to the FOI Act. The Acting Information Commissioner (**the A/Commissioner**) provided the parties with her preliminary view, which was that the report was not exempt under clause 6(1).

Following further discussions with the OIC and the third party, the agency withdrew its exemption claim and agreed to give the complainant access to the report by inspection only. The third party consented to this proposal and the complainant accepted access to the report in this manner.

In light of the agreement reached, there were no issues remaining in dispute and the matter was resolved.

Timeliness of external review

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

In November 2022 the Standing Committee on Public Administration sought the Commissioner's views in relation to the timeliness of external reviews. The Commissioner's response dated 22 November 2022 (publicly available on Parliament's [website](#)) outlines a number of factors that affect the time it takes to finalise an external review, which remain relevant.

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.

Our processes continue to be reviewed regularly to find efficiencies wherever practicable, without compromising the integrity of the external review process. This year we have had a particular focus on addressing our backlog. To that end, we have developed and implemented internal strategies to deal with and reduce our backlog.

Those strategies include:

- increased monitoring of the progress and allocation of matters;
- recruiting more external review staff (subject to budgetary constraints);
- expanding the conciliation conference program by increasing the number of conciliators and holding a greater number of conferences;
- encouraging external review officers to use informal resolution strategies wherever possible including telephone discussions with parties as appropriate and issuing initial assessments (rather than referral of the matter to the Commissioner to issue her formal written preliminary view); and
- streamlining the external review process to avoid unnecessary steps or potential duplication in process, for example, where a party does not accept an officer's initial

assessment of a matter, referral of the matter to the Commissioner to consider finalisation of the matter by formal decision rather than the Commissioner issuing a preliminary view, subject to compliance with procedural fairness obligations.

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

*Percentage of External Reviews finalised - by age in time periods*

	Less than 6 months	Between 6 and 12 months	Greater than 12 months
2018/19	60.5%	34.2%	5.3%
2019/20	46.6%	34.5%	18.9%
2020/21	35.6%	38.3%	26.1%
2021/22	48.0%	33.8%	18.2%
2022/23	36.7%	26.6%	36.7%

***Percentage of External Reviews on hand at end of reporting period - by age in time periods***

	Less than 6 months	Between 6 and 12 months	Greater than 12 months
2018/19	68.0%	30.0%	2.0%
2019/20	44.9%	35.6%	19.5%
2020/21	64.0%	23.0%	13.0%
2021/22	54.1%	28.1%	17.8%
2022/23	40.9%	25.0%	34.1%

**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 15 applications for external review were finalised by formal published decision of the Commissioner. The decisions are published on our [website](#). The following section outlines particular decisions of the Commissioner during the reporting period that may be of broader interest.



***Re ‘D’ and Legal Aid Western Australia [2022]***  
[WAICmr 10 \(PDF\)](#)

**Correspondence about a meeting with a legal practitioner  
- clause 5(1)(e)**

The complainant applied for access to correspondence between a named private legal practitioner and the agency in relation to a particular meeting the complainant had with the legal practitioner.

The agency refused access under clauses 3(1) and 5(1)(e) of Schedule 1 to the FOI Act.

Based on her examination of the disputed document, and taking all of the material before her into account – which included material provided by the agency that supported the agency’s exemption claims – the Commissioner was satisfied that disclosure of the disputed document could reasonably be expected to endanger the life or physical safety of a person and that the disputed document was therefore exempt under clause 5(1)(e).

The complainant claimed that disclosure of the disputed document was in the public interest. The exemption in clause 5(1)(e) is not subject to a public interest test, except in the very limited circumstances in which clause 5(4) applies. As the disputed documents did not contain information of the kind described in clause 5(4)(a), the Commissioner considered it was not open to her to consider whether or not disclosure of the disputed document was in the public interest.

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

***Re Ellis and Department of Justice [2022]*** [WAICmr 11 \(PDF\)](#)

**List of telephone calls made by prisoner - section 26**

The complainant applied for access to a list of telephone calls he made while incarcerated at a particular prison within a specified date range. The agency refused access to the requested document under section 26 of the FOI Act on the ground that the document either cannot be found or does not exist.

The Commissioner considers that, in dealing with section 26, the following questions must be answered. First, whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be, held by the agency. Where those questions are answered in the affirmative, the next question is whether the agency has taken all reasonable steps to locate those documents.

On the material before her, the Commissioner accepted that there were reasonable grounds to believe the requested document should exist and should be held by the agency. The agency conducted additional searches during the external review process.

After considering the material before her, including the searches conducted by the agency, the Commissioner observed that, although there may be reasonable grounds to believe that the requested document should

exist, it appeared that the requested document did not exist, which may be attributable to inadequate record keeping on the agency's part. The Commissioner drew this apparent deficiency in the agency's record keeping to the agency's attention.

The Commissioner was satisfied that the agency had taken all reasonable steps to locate the requested document.

Accordingly, the Commissioner confirmed the agency's decision to refuse the complainant access to the requested document under section 26 of the FOI Act on the ground that it either cannot be found or does not exist.

*Re 'P' and the City of Stirling [2022]* [WAICmr 13 \(PDF\)](#)

Correspondence between the agency and named individuals – clause 3(1)

The agency received an access application seeking access to particular correspondence between the agency and the owners of a specific property, or their lawyers (**the disputed documents**). After seeking the views of a number of third parties, including the complainant, the agency decided to give the access applicant access to the disputed documents, mostly in an edited form.

The complainant objected to disclosure of the disputed documents, claiming they were exempt, and applied to the Commissioner for external review of the agency's decision to give access. The access applicant was joined as a party to the matter and provided submissions to the Commissioner.

After considering all of the material before her, the A/Commissioner was of the view that disclosure of the disputed documents would reveal personal information, as defined in the FOI Act, and that it was not possible for any of the disputed documents to be edited in such a way as not to disclose personal information about private individuals. In balancing the competing public interests for and against disclosure, the A/Commissioner concluded that the public interests favouring disclosure of the disputed documents were not sufficient to outweigh the strong public interest in the protection of personal privacy of individuals, including the complainant.

The A/Commissioner set aside the agency's decision and, in substitution, found that the disputed documents are exempt in their entirety under clause 3(1) of Schedule 1 to the FOI Act.

*Re Vos and the Western Australian Institute of Sport [2022]* [WAICmr 14 \(PDF\)](#)

Board report and meeting minutes – clause 7(1) and section 26

The complainant applied to the agency for access to a particular report (**the Report**) and the minutes of three meetings of the agency's board (**the Board**).

The agency decided to refuse access to the Report, on the basis that it was exempt under clause 7(1) of Schedule 1 to the FOI Act; to give the complainant access to edited copies of the minutes of two Board meetings, claiming the deleted information was exempt under various exemptions including clause 7(1); and to

refuse access to the minutes of the third Board meeting (**the Board Minutes**) under section 26 of the FOI Act.

The complainant sought external review of the agency's decision claiming that the Report was not exempt under clause 7(1); that the information deleted from the minutes of the two Board meetings was not exempt; and that the Board Minutes did exist, citing the agency's constitution, which requires that minutes of all Board meeting should be recorded.

Based on the material before her, the A/Information Commissioner was satisfied that the dominant purpose of the creation of the Report was to give or obtain legal advice. Accordingly, the A/Commissioner found that the Report would be privileged from production in legal proceedings and that it was, therefore, exempt under clause 7(1). The A/Commissioner found that some, but not all, of the information deleted from the minutes of the two Board meetings contained a record of privileged communications between the agency and its legal advisers, which was privileged and, therefore, exempt under clause 7(1).

The A/Commissioner noted that, although there were deficiencies in the agency's record keeping practices in this particular matter, she accepted the agency's advice that it did not create the Board Minutes. Therefore, the A/Commissioner found that the agency's decision to refuse access to the Board Minutes under section 26 was justified on the grounds that the Board Minutes do not exist.

*Re Brook and University of Western Australia [2023]*  
[WAICmr 1 \(PDF\)](#)

Correspondence relating to academic publishing – clause 3(1)

The complainant applied for access to certain emails relating to an article he authored which had been published and subsequently retracted by an academic journal. The emails sought were between the editor of the journal, who was also an officer of the agency, and employees of the publisher of the journal. The agency gave the complainant edited access to 45 documents and refused access to four documents (**the disputed documents**) on the basis that they were exempt under clause 4(3) of Schedule 1 to the FOI Act.

Under section 76(1)(b) of the FOI Act, the Commissioner may decide any matter in relation to an access application that could have been decided by the agency. Based on her examination of the disputed documents and consideration of all the material before her, the Commissioner concluded that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

The Commissioner considered that the disclosure of the personal information of the officer in the disputed documents would not 'merely' reveal prescribed details about the officer and therefore found that the limit on the exemption in clause 3(3) did not apply. The Commissioner was not persuaded that the public interests favouring disclosure of the disputed documents

outweighed the strong public interest in the protection of personal privacy. Therefore, the Commissioner found that the limit on the exemption in clause 3(6) did not apply to the disputed documents.

The Commissioner varied the agency's decision and found that the disputed documents are exempt under clause 3(1).

*Re 'M' and Department of Communities [2023]*  
[WAICmr 2 \(PDF\)](#)

Access application made on behalf of a child – section 98(a)

The complainant sought access to two Child Safety Investigation Review documents relating to the complainant's children (**the disputed documents**). The complainant stated the applications were made on behalf of his children, aged almost 15 years and 17 years, pursuant to section 98(a) of the FOI Act. Section 98(a) relevantly provides that an access application may be made on behalf of a child by the child's guardian or the person who has custody or care and control of the child.

The agency refused to deal with the complainant's access application on the basis the applications were not validly made under section 98(a) because the disputed documents contained sensitive personal information relating to the children; the children were old enough to make their own access applications; and the complainant had refused to allow the agency to contact the children to

test the children's understanding of the applications purportedly made on their behalf.

The Commissioner considered it is well established that the FOI Act provides strong protection for the personal information of individuals and that as children grow older, they have an increasing right to participate in decisions about them and to privacy over their personal information.

The Commissioner also considered that, as the disputed documents contained sensitive personal information about the complainant's children, and the children were old enough to make an application in their own right, it was proper that the agency seek to satisfy itself that the children consented to the complainant making an application on their behalf. The Commissioner noted that the complainant refused to allow the agency to contact his children to make those enquiries.

The Commissioner was not persuaded that the requisite consent from the complainant's children for the complainant to make an access application on their behalf had been established. As a result, the Commissioner was of the view that a valid application under section 98(a) of the FOI Act had not been made and the Commissioner confirmed the agency's decision to refuse to deal with the access applications.



***Re Woodside Energy Ltd and Department of Water and Environmental Regulation [2023]*** [WAICmr 3 \(PDF\)](#)

**Air quality management plan for a LNG plant – clause 4(1) and 4(2)**

The access applicant applied to the agency for access to documents relating to a specified works approval. As the agency identified documents that contained information about Woodside Energy Ltd (**the complainant**), including a particular report (**the disputed document**), the agency sought the complainant's views, pursuant to section 33 of the FOI Act.

The agency decided to give the access applicant access to the disputed document. The complainant sought external review of the agency's decision, claiming that the disputed document was exempt under both clauses 4(1) and 4(2) of Schedule 1 to the FOI Act.

The A/Commissioner was not satisfied that the disputed document contained information that is a trade secret and therefore did not consider that the requirements of clause 4(1) were made out. The A/Commissioner observed that the complainant had been required to provide the disputed document to the agency, to comply with the requirements of a ministerial statement, and that much of the information in the disputed document is publicly available.

In considering the application of clause 4(2), the A/Commissioner was not persuaded that the information in the disputed document is valuable to the complainant for the purposes of carrying out its commercial activities

or that the expenditure of money or resources alone was sufficient to establish that the information had a commercial value. The A/Commissioner noted that, even if she were persuaded that information in the disputed document did have a commercial value, she did not accept that its disclosure could reasonably be expected to destroy or diminish the commercial value of the information, as required by clause 4(2)(b).

The A/Commissioner found that the disputed document is not exempt under either clauses 4(1) or 4(2) of Schedule 1 to the FOI Act and confirmed the agency's decision.

***Re 'T' and Department of Education [2023]*** [WAICmr 4 \(PDF\)](#)

**ATAR assessments – clause 11(1)(a)**

The complainant sought access to documents in relation to various assessments, tests and examinations taken by her son for an ATAR subject (**the disputed documents**). The agency refused access to the disputed documents on the basis that they are exempt under clause 11(1)(a) of Schedule 1 to the FOI Act.

The Commissioner was satisfied that the disputed documents were assessments that formed part of a formal process of evaluation of students' knowledge of the relevant unit of study and came within the meaning of 'tests' or 'examinations' as described in clause 11(1)(a).

The Commissioner accepted that schools develop and reuse valid assessment tasks, which involves a significant amount of time. The Commissioner also accepted that releasing assessment tasks to students

would adversely compromise test security in the administration of tests and examinations and impact on the effectiveness of testing and moderation procedures. The Commissioner considered that disclosure of the disputed documents could reasonably be expected to impair the effectiveness of the agency's methods or procedures for the conduct of the tests or examinations and was satisfied that the disputed documents are, on their face, exempt under clause 11(1)(a).

Information is not exempt under clause 11(1) if its disclosure would, on balance, be in the public interest. The Commissioner considered that the complainant sought access to the disputed documents primarily to further a private grievance and that her personal interests did not weigh in favour of disclosure of the disputed documents. The Commissioner accepted that the agency plays a significant role in maintaining a fair and consistent process in the moderation of student marks to assess the educational standards of students and should be accountable for the performance of that role. However, the Commissioner considered that the disclosure of the specific details of individual tests or examinations would likely diminish the agency's ability to maintain the integrity of its methodology.

After weighing the competing factors, the Commissioner did not consider that disclosure of the disputed documents would, on balance, be in the public interest.

Accordingly, the Commissioner confirmed the agency's decision and found that the disputed documents are exempt under clause 11(1)(a).

### 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 if 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 five years.

	External reviews finalised	Section 67(1)(b) outcomes	
		#	%
2018/19	152	11	7.2
2019/20	148	27	18.2
2020/21	180	45	25.0
2021/22	148	16	10.8
2022/23	139	14	10.1

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 over the last two years from the previous two years. This is likely to be due in part to the number of preliminary views issued in the last four reporting periods - 57 in 2019/20, 86 in 2020/21, 48 in 2021/22 and 40 in 2022/23.

### **External review outcome benefits**

When an external review is finalised by the OIC the outcome is currently recorded as one of four types of legislative outcome (see [Table 5](#)). The FOI Act outlines the basis on which an external review can be finalised as outlined below.

- 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 the external review process, are described in published formal decisions and case studies of conciliated matters reported in annual reports. 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 process.

For example, a formal published decision may state that an agency's decision is confirmed in relation to any issues that remained 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 as a result of the external review process, 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 four legislative



outcomes of an external review, as outlined above. Some matters may have more than one benefit to a party.

For each external review finalised since 1 July 2019, the OIC case officer was required to identify whether:

- access to additional documents or parts of documents were given to the complainant;
- additional action was taken by the agency while the matter was on external review which resulted in more information being provided to the applicant;
- the scope of the external review was reduced by a party; or
- no additional benefit was attributed to a party to an external review.

In the first year recording this data (2019/20) 148 external reviews were finalised. In the second reporting period (2020/21) 180 external reviews were finalised. In the third reporting period (2021/22) 148 external reviews were finalised. In the current reporting period 139 external reviews were finalised. The chart below summarises the outcome benefits of external review applications for the previous three years and the current year.

	2019/20		2020/21		2021/22		2022/23	
	#	%	#	%	#	%	#	%
Additional documents or parts of documents released to the complainant	45	30.4	42	23.3	45	30.4	29	20.9
Additional action taken by the agency	53	35.8	61	33.9	50	33.8	43	30.9
Reduction in scope	8	5.4	15	8.3	10	6.8	5	3.6
No additional benefit	55	37.2	69	38.3	50	33.8	53	38.1

### *External review activity over the last 10 years*

In the last 10 years the OIC has received a total of 1,549 external reviews (average of 154.9 per year) and finalised a total of 1,494 (average of 149.4 per year).

However, by assessing each five year period a clearer picture indicates what has contributed to the current position of the OIC in respect of the number of external reviews on hand and the time that it takes to finalise them.

Period	Rec'd	Avg per year	Finalised	Avg per year
2013/14 – 2017/18	696	139.2	727	145.4
2018/19 – 2022/23	853	170.6	767	153.4
	+157	+31.4	+40	+8
	↑22.5%		↑5.5%	

In summary, although the OIC has increased the number of external reviews finalised by 5.5% over the last five years, there has been a significant corresponding increase of 22.5% in the number of external reviews received.

### *Other matters dealt with by external review staff*

In addition to dealing with external review applications, the Commissioner is required to deal with other kinds of matters under various provisions of the FOI Act. Such matters include:

- applications for a reduction in time or an extension of time under sections 13(4), 13(5) and 13(7) of the FOI Act;
- applications made by agencies under section 35(1) of the FOI Act for approval to waive the requirement for third party consultation;
- applications for external review to be accepted out of time under section 66(4);

- applications for external review to be accepted without internal review under section 66(6); and
- requests for a destruction certificate under section 48(3) of the FOI Act.

These matters are often dealt with by external review staff on behalf of the Commissioner under their delegated authority, pursuant to section 79 of the FOI Act.

In addition, external review staff deal with:

- requests for intervention from applicants or agencies regarding the processing of an access application where a preliminary administrative dispute has arisen;
- requests from agencies for confirmation of whether an external review application has been received from a third party; and
- notifications from agencies under section 15(8) that the agency is dealing with an application where a requested document originated with or was received from the OIC.

Dealing with the above matters is part of the workload of external review staff, which must be managed in conjunction with the core work of dealing with external review applications. The work involved in dealing with those additional matters is not insignificant.

## 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 375 phone and written enquiries from agencies
- Four editions of the OIC FOI Newsletter published
- 337 subscribers to the OIC Newsletter as at 30 June 2023
- Prepared for OIC's November 2023 FOI in WA Conference

*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

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

- Recommendations published in annual report
- Preparation of proposed terms of reference for review of the FOI Act

*Explored opportunities for collaboration to champion the principles of open government*

- Continued provision of web resources for agencies about the FOI process
- Participated in Association of Information Access Commissioners events
- Participated in the meeting of the International Conference of Information Commissioners
- Promoted celebrations for 30 years of FOI legislation in WA

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*

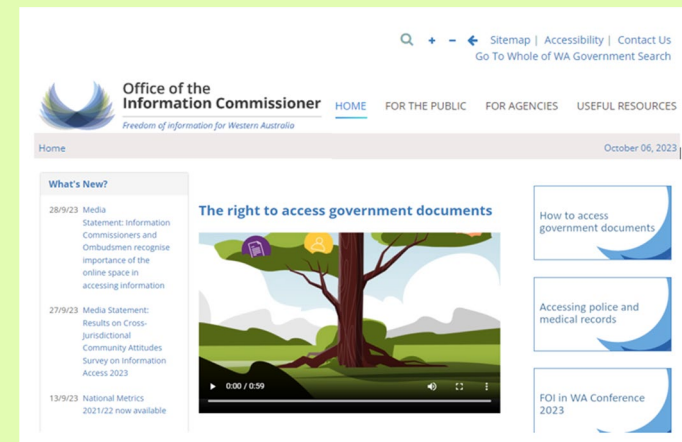
- Responded to 1,035 in person, phone and written enquiries from members of the public.
- Continued to make available plain English publications about FOI processes for the public on the OIC website
- Captions added to website video for enhanced accessibility

*Promoted community understanding about the role of the Commissioner*

- The Commissioner spoke at events to promote an understanding of her role and of the right to access documents
- Participated in regional visits to raise awareness of FOI and the role of the Commissioner

*Increased community awareness of freedom of information rights*

- Promoted International Access to Information Day
- Participated in regional visits to raise awareness of FOI



## ***Training, briefings and the Commissioner's engagements***

The OIC provides training and briefings for agencies and their staff about processes and obligations under the FOI Act, and to ensure that agencies understand the opportunities to give effect to the objects of the FOI Act beyond formal access procedures.

The OIC also 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 State and local governments and to non-government groups as part of those activities.

A list of the training, briefings and workshops provided by the OIC is available at [Table 9](#).

### **FOI Training for FOI Coordinators and decision-makers**

The OIC provides 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, as set out below, and is aimed at State and local government officers dealing with FOI in their agency.

- Module 1 – FOI Basics
- Module 2 – Dealing with an access application – Part 1
- Module 3 – Dealing with an access application – Part 2
- Module 4 – The exemptions – Part 1

- Module 5 – The exemptions – Part 2
- Module 6 – 'Third parties'
- Module 7– Notices of decision and review rights
- Module 8 – Other requirements of the FOI Act and series summary

Completion of all modules will assist participants to 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, including a PowerPoint presentation, and material from the FOI Coordinator's Manual.

Assessment questions that will allow participants to demonstrate their understanding of the concepts covered in each module and receive a certificate of participation have yet to be operationalised. This continues to be a focus for the OIC.

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

### **FOI Wednesday Webinars**

In March 2022, the OIC commenced a program of online FOI Wednesday Webinars for agency FOI practitioners. 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 webinars offered in this reporting period covered:

- *Amendment of Personal Information* - about how the right to amendment of personal information works in practice for agencies
- *Open by Design Principles* – discussion about dealing with information access outside of the FOI process
- *Skills for Effective Communication in the FOI Process*
- *What Happens on Internal and External Review?*
- *Third party case studies*

The webinars are recorded and made available for viewing following the delivery of the webinar. Links to recordings of the webinars are available on request to the OIC. The accompanying presentation notes are also made available to agencies on request to the OIC when the links are required.

### 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.

### FOI Newsletter

The OIC published four newsletters during the reporting period in [September 2022](#), [December 2022](#), [March 2023](#) and [May 2023](#).

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.

At the end of the reporting period, the OIC had 337 subscribers to the OIC Newsletter. 48.4% 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 resources*

The majority of the OIC's written resources 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 to understand 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 FOI Act exemptions and external review procedures.

The [FOI Coordinator's Manual](#) is a key resource for anyone seeking to understand the 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 published a new publication – [Open by Design – FOI and Information Release in WA](#) in September 2022. The publication was finalised using feedback provided in response to the publication of a draft document in May 2022, which included an invitation for readers to provide feedback by the end of July 2022. This new publication is designed 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.

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

### 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 often issues 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 can be 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 notifications of newly published decisions of the Commissioner are available at our [website](#).



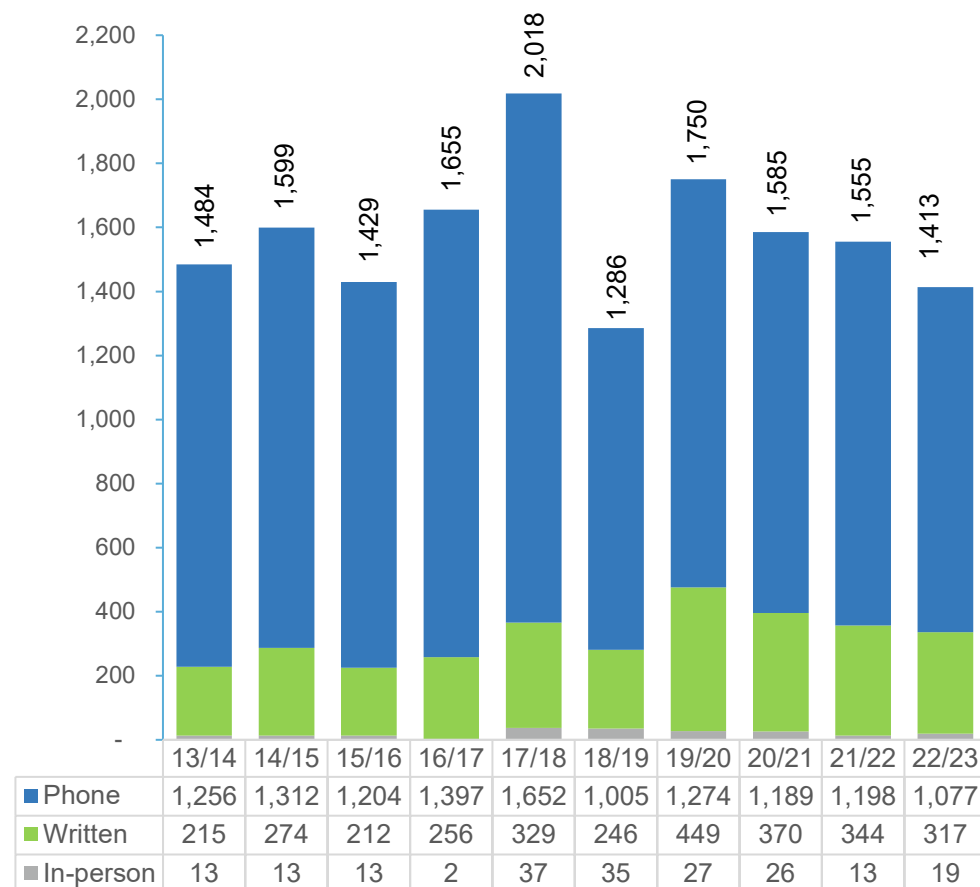
## Responding to enquiries

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.

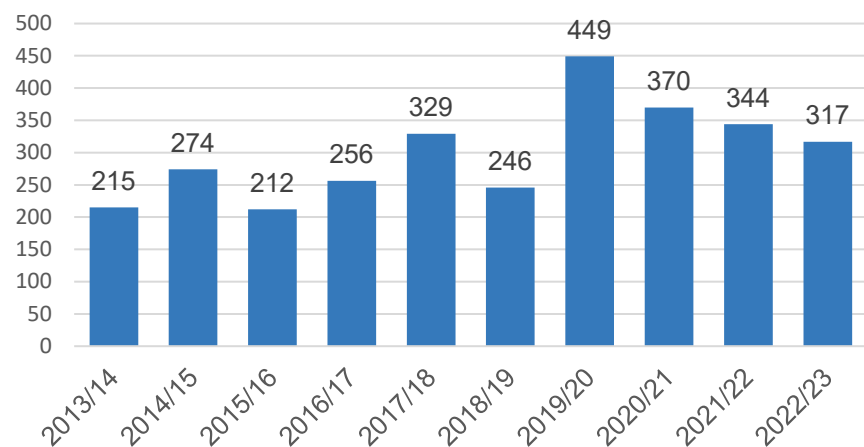
Members of the public sometimes misdirect their requests for documents held by particular agencies to the OIC. For example, each year the OIC receives a number of access applications for medical records. People who misdirect their request are advised that under the FOI Act, access applications should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

This year the OIC dealt with 1,413 written, phone and in-person requests for guidance, and misdirected requests. This is a 142 less than the 1,555 requests for advice received last year.

Enquiries received over 10 years



### Written guidance provided



Written requests for guidance are received from agencies and members of the public. Written responses assist enquirers to understand processes and obligations under the FOI Act. 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.

### International Access to Information Day 28 September

International Access to Information Day (**IAID**) – formally 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 2022 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 OIC held a Wednesday Webinar on 28 September 2022 titled *Open Government - Open Data in Practice*. The Commissioner was joined by the Manager, Biodiversity

Information Office, Department of Biodiversity, Conservation and Attractions to discuss the progress of open data in WA.

The OIC published its new *Open by Design* publication as part of IAID celebrations.

The OIC also promoted IAID activities hosted by other information access jurisdictions in Australia.

### ***Online FOI access application form***

As reported in our 2019/20 annual report, in early 2020 the OIC began working with the Office of Digital Government – and a number of State government agencies that had migrated their agency website to the WA.gov.au site – to develop an online generic FOI access application form.

The online FOI access application form was developed to allow 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.

In January 2023 the online form was modified to direct people seeking to make an application to the relevant agency, but it does not allow an access application to be lodged online from the webpage. The ability to lodge the form using the webpage was ceased following changes in the functionality of the form software. In particular, further assessment of the form and its

functionality is required in order to ensure that appropriate privacy protections for those using online form are maintained. The future of an online FOI access application form will be considered in the next reporting period.

### ***Accessibility of OIC resources***

In January 2023, the OIC investigated ways to make its website and video content more accessible. The first initiative was to add captions to the video *The right to access government documents*, which can be found on the OIC's homepage. This video, which explains the fundamentals of access to government information, is now accessible to those with hearing disability, and can be watched without sound. After the success of this project, the OIC is making plans to caption its other videos, including its FOI Fundamentals Series.

### ***Preparations for the FOI in WA Conference***

Planning for the OIC's third FOI in WA Conference in late 2023 was a significant part of the OIC's advice and awareness activities for 2022/23.

The theme for the conference is *FOI and open government in the digital age*. The keynote speaker for the conference is the Hon Dr Carmen Lawrence AO. Panellists will include information access commissioners and ombudsmen from across Australia and New Zealand; agency FOI, records and data practitioners; lawyers; and academics.

The OIC created a conference [webpage](#), to be updated throughout the remainder of 2023 as conference details are finalised.

## *Preparations to celebrate 30 years of FOI*

In 2023, the OIC celebrates the 30<sup>th</sup> anniversary of the appointment of the first Information Commissioner and the commencement of the FOI Act. During the reporting year, the OIC planned a morning tea held in July 2023 to celebrate 30 years of work by FOI practitioners across State and local government, and prepared a [webpage](#) outlining key events and FOI in general.

## *Regional Awareness and Accessibility Program*

Regional visits offer the opportunity to raise public and agency awareness of FOI procedures and processes to improve decision-making and to meet officers of State and local government agencies. Face-to-face meetings give regional officers the opportunity to raise issues and obtain clarification and advice about the requirements of the FOI Act.

As part of the Regional Awareness and Accessibility Program (**the RAAP**) led by the Ombudsman WA, the OIC visited the East Pilbara in October 2022 and West Pilbara in May 2023.

The East Pilbara visit to Newman, Tom Price and Paraburdoo included representatives from the following agencies:

- Ombudsman WA
- Energy and Water Ombudsman
- Commonwealth Ombudsman
- Health and Disability Services Complaints Office
- Equal Opportunity Commission

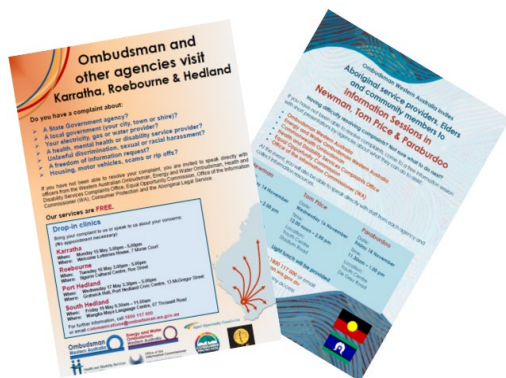
- OIC

The West Pilbara visit to Karratha, Roebourne and Port Hedland included representatives from the following agencies:

- Ombudsman WA
- Energy and Water Ombudsman
- Health and Disability Services Complaints Office
- Equal Opportunity Commission
- Aboriginal Legal Service
- OIC

The program for each visit included drop-in clinics where members of the public could bring their complaints or questions to be resolved; meetings with the Aboriginal community; and visits to, and liaison with, public authorities and community organisations.

The OIC appreciates the opportunity to participate in the RAAP visits when staff resourcing allows. Participation in the RAAP is a valuable opportunity to collaborate with other agencies to gain a better understanding of the specific needs of regional WA and to work together to address some of those needs. The OIC acknowledges and appreciates the work of Ombudsman WA to organise and coordinate the RAAP.



*Flyers distributed for RAAP visits to the East and West Pilbara*

### **FOI services to the Indian Ocean Territories**

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 to the territories of [Christmas Island](#) and the [Cocos \(Keeling\) Islands](#), collectively known as the Indian Ocean Territories (**IOT**). 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](#).

From 1 July 2022 the OIC commenced a five year SDA with the Commonwealth Government to deliver FOI services to the IOT. Under the SDA the OIC will provide independent merits 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 OIC will

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

The Commissioner visited the IOT in August 2022 and met with the IOT Administrator, Director of the IOT Administration Office and the Chief Executive Officers of the shires of Christmas Island and the Cocos (Keeling) Islands.

These meetings served to introduce the role of the Commissioner and the operations of the FOI Act, and to hear about issues facing the IOT community relevant to the Commissioner's jurisdiction.

The OIC's Coordinator, Education and Communications visited the IOT in May 2023 with officers from the Equal Opportunity Commission, Health and Disability Services Complaints Office, the Department of Mines, Industry Safety and Regulation and the Department of Communities. This visit included meetings with shire officers, officers of other agencies working in the IOT and community organisations and representatives, and public information sessions.

The OIC produced materials about accessing documents under the FOI Act, which were translated into Cocos Malay and Mandarin.



## 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*

- Completed workforce review
- Additional funding sought and approved to increase staff resources from 1 July 2023
- Commenced a review of job descriptions and organisational structure

*Explored flexibilities that enhanced working arrangements and professional development*

- Remote working arrangements approved
- Supporting continuing professional development (CPD) requirements for legal staff
- Approval given for staff to attend training, events and other development opportunities

*Cultivated a positive organisational culture that supports personal wellness*

- Continued support of a Mental Health First Aid Officer
- Promotion of the Employee Assistance Program

**Strategic Goal: Sound information systems that support our operational needs**

*Used technology to improve efficiency and accessibility to our services*

- Vulnerability assessment of network infrastructure and programs conducted

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

- Submission of a business case to the Digital Capability Fund to replace systems for case management and records management

## Organisational review

As reported in the 2021/22 annual report, consultants were engaged in early 2022 to conduct an organisational review of the OIC in order 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 recommendations from the review formed the basis of a revised organisational structure that was developed during 2022/23, to come into effect from 1 July 2023. The primary change to the structure was to update the flat two-tier design to a three-tier format with clear managerial responsibilities under two business units: external review and legal services; and education, communications and business services. The recommendations also outlined the optimal staff requirements to be able to discharge and support the Commissioner's statutory functions under the FOI Act and the strategic goals of the OIC. Consideration was given to factors such as current workloads, recognition of additional duties, organisational risk and the attraction and retention of staff.

To assist to implement the proposed new structure, the OIC sought additional funding and was awarded \$1.7 million from 2023/24. This will increase staff resources in the following manner:

- the addition of three FTEs for two years to reduce the backlog of external reviews;
- the reclassification of six existing positions; and
- the addition of one FTE for two years to increase corporate services capability.

Preliminary work began during the year to prepare for the new structure. This work included new staff appointments; the creation of new positions; review of existing job descriptions; preparation for new reporting relationships; and the creation of a leadership group.

In the coming year, the OIC will continue recruitment for new positions and embed the improved organisational structure.

## Risk management

In the previous reporting period, the OIC engaged consultants to review its management of risk. A report was provided in June 2022 with recommendations to meet the relevant standards in risk management. This year, addressing these recommendations has been the key focus of the Risk Management Steering Committee (**RMSC**). Progress made includes the completion of a comprehensive Risk Management Framework, which is designed to address the OIC's specific organisational needs and risks, and securing additional funding to assist the OIC to strengthen its risk management capacity.

These developments have involved a substantial body of work that required the involvement of the Commissioner and senior staff.



## 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:

- Use technology to improve efficiency and accessibility to our service.
- Implement a case management system that meets our reporting needs.
- Transition to an electronic records management system to better manage our record-keeping obligations.
- Refine, review and improve our knowledge management system.

These are major initiatives that will have a high impact on the OIC's operations.

This year, in order to address the second and third objectives above, the OIC prepared and submitted a business case to the Digital Capability Fund for an integrated case management system (**CMS**) and electronic document and records management system to replace the OIC's existing systems. As a result, \$1.4 million in funding for 2023/24 has been provided for this project.

## Cybersecurity

The OIC reported last year that it had liaised with the Office of Digital Government (**ODG**) to perform a second vulnerability

assessment of the operating system and network to identify deficiencies and make recommendations for their improvement. This follows the assessment conducted 12 months prior.

Strategic recommendations made by the ODG mirrored the previous assessment, including considering the replacement of the CMS and moving to cloud-based software solutions. The recommendation to replace the CMS will be progressed in the coming year as outlined previously, and the migration of the OIC's Exchange Server to Microsoft 365 is a concurrent project.

## Workplace Wellness and Culture

### Flexible working arrangements

The OIC continues to provide flexible working arrangements. During the year, all staff migrated from desktop workstations to laptops and are able to access the OIC's network remotely through a secure virtual private network.

The OIC recognises that flexibility in the workplace is a sign of a modern workforce and supports staff being able to work flexibly when appropriate, either as an ongoing basis or as the need arises.

### Career development

Due to the small size of the OIC, there is limited capacity for career advancement within the organisation. It is recognised that this can pose a risk to job satisfaction and staff retention. This issue was considered as part of the organisational review

outlined previously and the new structure has been designed to provide greater opportunities for staff.

### Workplace health and safety

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 health and safety is about making sure staff, contractors and the community feel safe and supported when at work and when visiting the office. This is reflected in the OIC's 2020 OSH Commitment statement.

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.

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

## Compliance audits

### *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 during the reporting year to review the OIC's previous internal audit results.

### *External audit*

The audit opinion from the Auditor General identified no reportable issues in the financial statements, key performance indicators or controls for 2022/23.

### *Internal audit*

At the time of this report the internal audit was yet to be completed. This delay has been reported to the Internal Audit Committee and the Office of the Auditor General, with the undertaking that it will be scheduled as soon as practicable.