



Office of the Information Commissioner

Freedom of information for Western Australia



ANNUAL REPORT 2019/2020

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

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.



Office of the
Information Commissioner

Freedom of Information for Western Australia

SPEAKER OF THE LEGISLATIVE ASSEMBLY

PRESIDENT OF THE LEGISLATIVE COUNCIL

ANNUAL REPORT TO 30 JUNE 2020

In accordance with section 63 of the *Financial Management Act 2006* I hereby submit my report for the reporting period ended 30 June 2020.

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

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

Catherine Fletcher
INFORMATION COMMISSIONER

24 September 2020

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About this report

Welcome to the Office of the Information Commissioner's 2019/2020 annual report.

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

Given that the key message of FOI legislation mirrors the purpose of agency annual reports – that is, 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

Provide a fair,
independent and
timely external
review service

Enhance public
awareness of rights
to government
information

Foster improvement
in agency practice

Build the capacity of
our people

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Overview

What is Freedom of Information?

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

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

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

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

How does it work?

Anyone has the right to lodge an FOI application to WA State and local government agencies and Ministers (collectively referred to as 'agencies') requesting access to documents, or to apply to have their personal information amended if it is incomplete, inaccurate, out-of-date or misleading. Agencies are then obliged to make a decision on access or amendment applications in accordance with the FOI Act.

Role of the Information Commissioner

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

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

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

Executive Summary

The year in review



I am pleased to present my annual report to Parliament and the community on the operation of the FOI Act and my office's operations for the 2019/2020 reporting period.

The FOI Act is a significant plank in the suite of accountability mechanisms that promote transparency, probity and good governance in State and local government. At the same time, the FOI Act supports the work of government by providing protection for certain types of information which the Parliament has decided ought to be protected.

With the advent of COVID-19 in the early part of 2020, there have been many new challenges across the whole community and especially in the public sector. It has been encouraging to see governments across Australia provide to the community frequent and detailed information, which appears to draw upon medical and other scientific expertise. The importance of access to information for transparency and trust, particularly in times of crisis, cannot be overstated. To this end I joined with other Information and Access Commissioners in supporting statements made by the International Conference of Information Commissioners, regarding the importance of keeping records, and providing access to those records, during COVID-19.

To assist agencies and members of the public to deal with challenges relating to FOI and access to information arising during COVID-19, my office produced two publications: '*COVID-19 Managing FOI timeframes and potential office closures*' and '*Applying for documents during the COVID-19 pandemic*'.

This year has seen a 4.5% decline in access applications made to all agencies in comparison to the previous year. This is perhaps not surprising given that last year the number of access applications made to all agencies increased by 11.5%. The decrease is almost entirely attributed to a decrease in applications made to State Government Departments (excluding Health and Police). I am pleased to see the continuing trend of a high proportion of access applicants receiving access in some form (85.2%).

The COVID-19 pandemic has impacted on my office's operations this year by limiting our ability to operate at full capacity for an extended period. However, it also accelerated the modernisation and modification of a number of our key work processes which are expected to provide future efficiencies.

There has been a significant and sustained increase in external reviews received by my office over the past three years. We have also reported an increase in the number of external reviews on hand at the end of the reporting period compared to last year. Our conciliation rate has also decreased. Initiatives continue to be identified and implemented in an effort to deal with this increased workload, such as the Early Intervention Program that was piloted this

year. Two new appointments to our external review team that had been delayed due to COVID-19 were also made in July this year to assist with our workload.

My office has also experienced increased demand for its advice and awareness services from agencies and members of the public seeking advice about rights and processes under the FOI Act. Significantly, there was a 36% increase in enquiries compared to the previous reporting period.

Responding to requests for advice, together with preparing new, and updating existing, written resources for agencies and members of the public, and providing training and briefing sessions about FOI, is particularly challenging with our limited staffing resources. As reported last year, I continue to have only one FTE position dedicated to this role with some occasional assistance provided by other staff in the office to that position. If, going forward, my office's human and ICT resourcing was increased, the advice and awareness function could provide greater support across the State in relation to information access and the FOI Act.

An important highlight for my office in the last year was our second 'FOI in WA Conference' which was held on 21 November 2019 at Fiona Stanley Hospital and attended by over 300 FOI practitioners and a number of agency leaders. The conference involved a keynote address from Emeritus Professor Geoff Gallop AC, a panel discussion about the role and challenges of FOI and open government, and concurrent sessions on select information access and FOI issues. We received very positive feedback about the conference and aim to continue to hold similar events in the future.

During the reporting period, we also completed a review of our strategic goals and initiatives. On 30 June 2020 I approved my office's strategic plan for 2020/23 and am looking forward to reporting on it next year.

My office continues to participate in various projects as a member of the Association of Access and Information Commissioners. The results of the *Information Access Study 2019* across the various jurisdictions were released in this reporting period. That information, together with the data that is reported in the *National Dashboard of Utilisation of Information Access Rights*, which compares statistics regarding the utilisation of information access rights across jurisdictions within Australia, suggests that the public in WA are continuing to make good use of their rights to access information.

As required by the FOI Act, I have recommended in this report some legislative or administrative changes that might assist in achieving the objects of the Act. However, as few substantive amendments have been made to the Act since it came into operation in 1993, I have, in this report, chosen to highlight a priority reform that could improve my operational effectiveness which involves removing the need for Executive Council approval for all staff appointments to my office.

Further, while the FOI Act has stood up well over almost 30 years of operation, it now operates in a significantly changed environment from that which existed at the time of its enactment. In an impending post-digital age, where almost all government records are expected to be 'born digital', I believe recent evidence supports a likely trend in which we can

expect policy makers, researchers and ordinary citizens to seek greater access to the valuable stores of government held information and data that might be employed to benefit society. In this context, an appropriately scoped, and independent, review of the FOI Act could examine and report back to the Parliament how best this important accountability device can continue to support transparency and trust in government.

Finally, I acknowledge the dedicated and highly professional team at my office and again thank them for their continued effort, dedication and support to me in my role, and their service to the Parliament and community of Western Australia.

2019/20 highlights



166

*External reviews
received*



95

*External reviews
resolved by
conciliation*



224

*Average age in days
of external reviews
on hand*



1,116

*Enquiries answered
from members of
the public*



750

*Attendees at OIC
briefing, training or
education sessions*



174

*External reviews
finalised*



118

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



8

*Published decisions
of the
Commissioner*



398

*Enquiries answered
from local and State
Government*



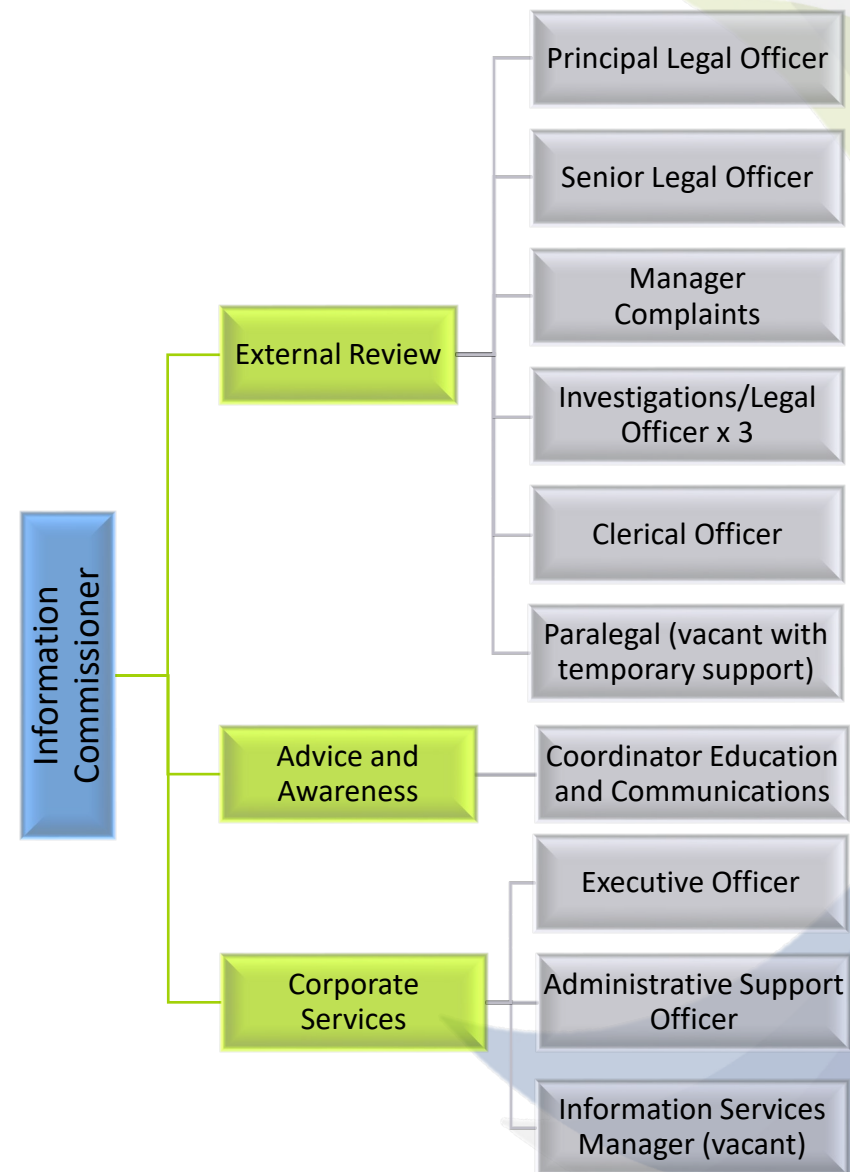
156,760

OIC website visits

About the Office of the Information Commissioner

As at 30 June 2020, the Commissioner was supported by 10 staff in the Office of the Information Commissioner (**the OIC**). Three areas operate to assist the Commissioner in meeting the objectives of the FOI Act:

- The *Resolution of Complaints (External Review)* team 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 conducts briefings and training sessions for agency staff and community organisations.
- Corporate service staff provide administrative, executive, information technology and governance support to the Commissioner and staff.



Performance management framework



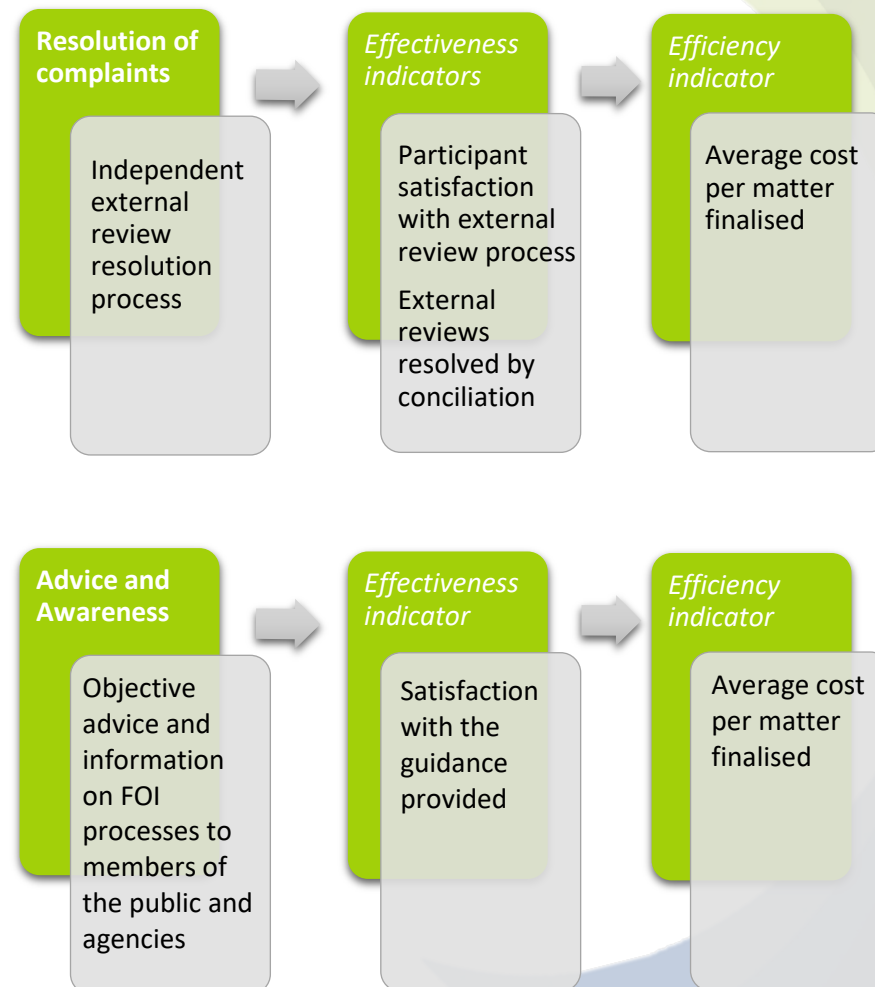
Resolution of complaints

Advice and Awareness

Access to documents
and observance of
processes in accordance
with the FOI ActStrong
Communities: safe
communities and
supported families

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

Outcome-based management framework



The Commissioner is an independent statutory officer. The OIC does not share any responsibilities with other agencies.

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

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

Administered legislation

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

Other key legislation that impacts on our 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*
- *Occupational Safety and Health Act 1984*
- *Public Interest Disclosure Act 2003*
- *Public Sector Management Act 1994*

- *Salaries and Allowances Act 1975*
- *State Records Act 2000*
- *State Supply Commission Act 1991*