



Office of the Information Commissioner

Freedom of information for Western Australia



ANNUAL REPORT 2019/2020



Disclosures and Legal Compliance

FOI in the sector

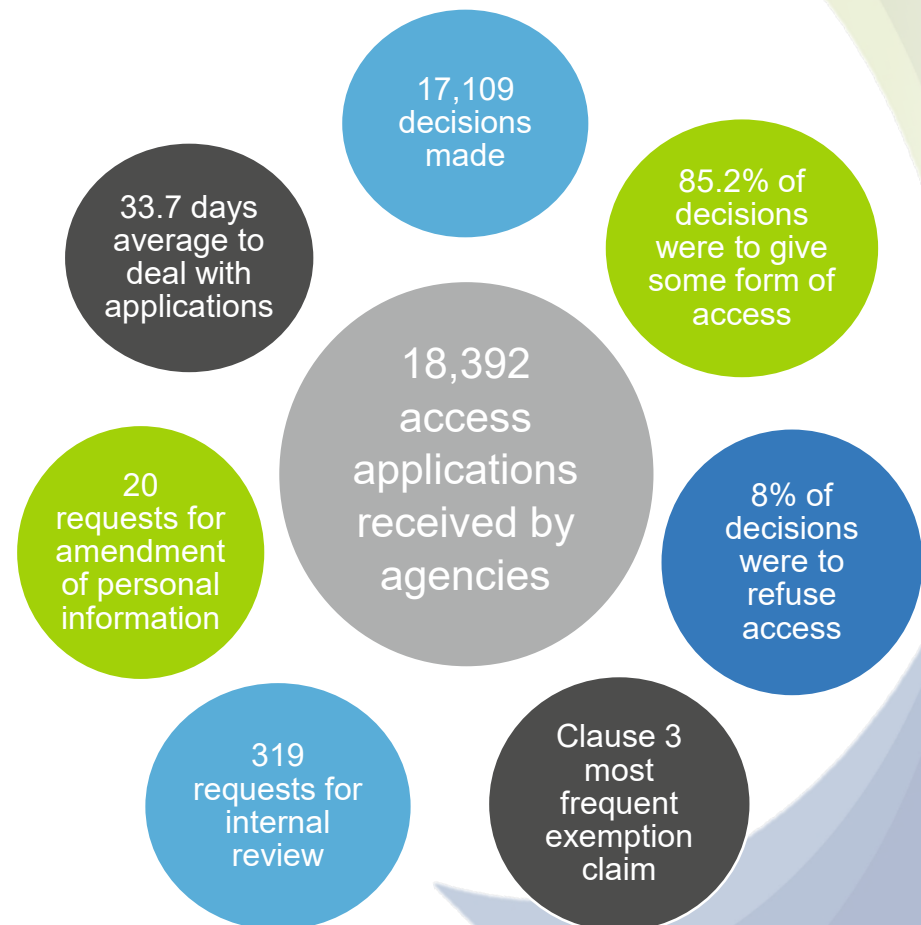
Section 111 of the FOI Act requires that the Commissioner's annual report to Parliament is to include certain specified information relating to the number and nature of applications dealt with by agencies under the FOI Act during the year. To enable that to occur, agencies are required to provide the Commissioner with the specified information. That information for 2019/20 is set out in detail in the statistical tables in the [Agency Statistics](#) chapter of this report. The following is an overview of key points.

Access applications received

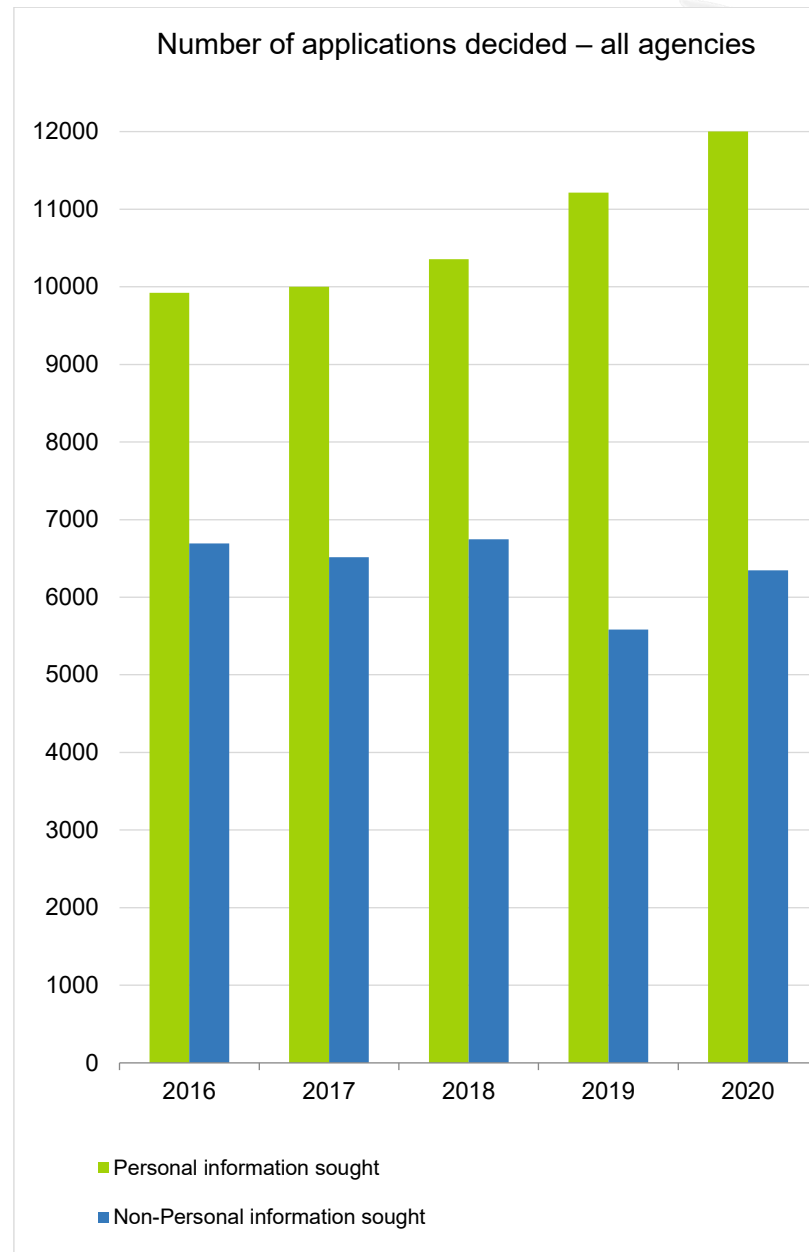
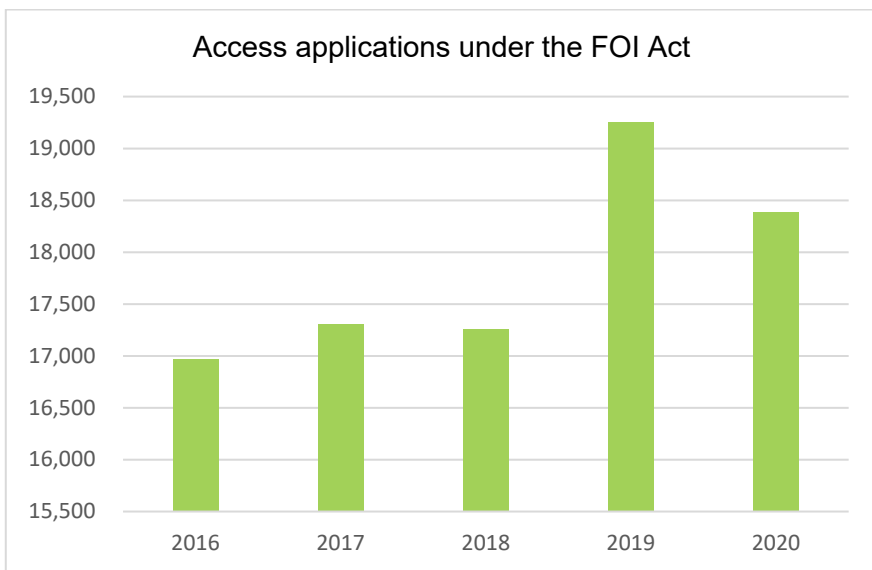
- The total number of access applications made under the FOI Act to agencies in 2019/20 was 18,392, a decrease of 866 from the previous year.
- Applications to departments (not including WA Police and health related agencies) decreased by 799 (17.5%).

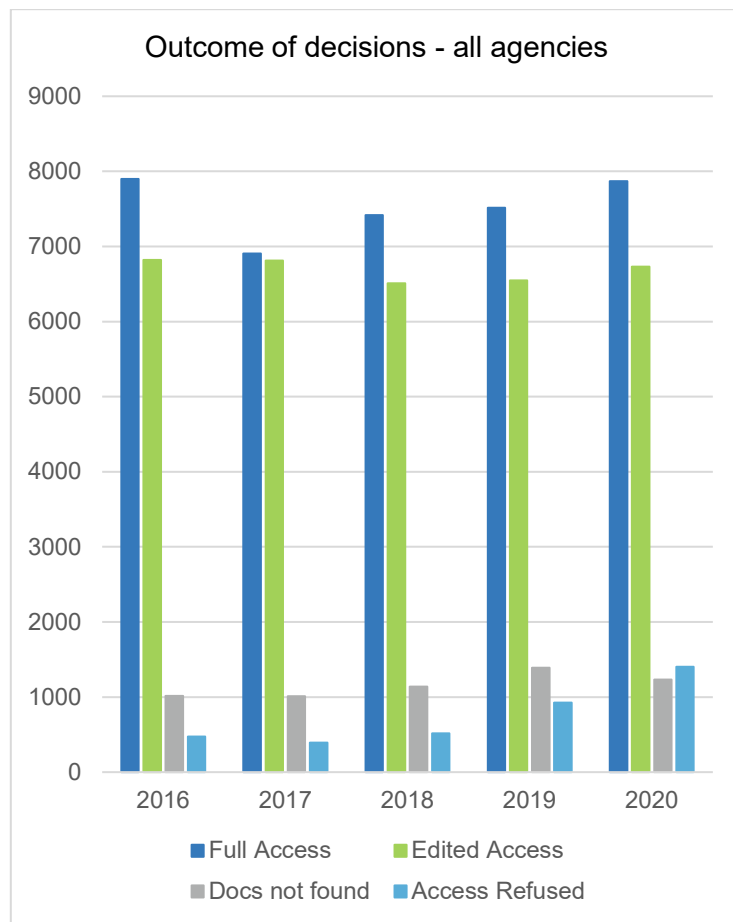
Agency decisions

- 17,109 decisions on access were made by State and local government agencies.
- 85.2% of all access decisions made were to the effect that access in some form was given (86.2% in 2018/19).



- 45.4% of decisions resulted in the applicant being given access in full to the documents sought (46.8% in 2018/19);
- 39.3% of decisions resulted in the applicant being given access to edited copies of the documents sought (39% in 2018/19);
- 0.4% of decisions resulted in either access being given but deferred, or being given in accordance with section 28 of the FOI Act (by way of a medical practitioner) (same as 2018/19);
- In 6.9% of access applications the agency claimed the requested documents either did not exist or could not be found (8.3% in 2018/19);
- 8% of the decisions made were to refuse access (5.5% in 2018/19).





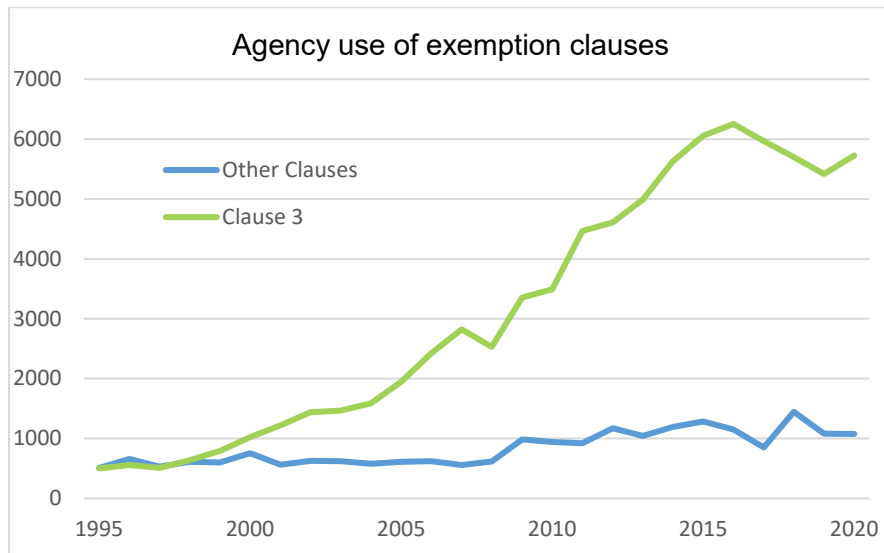
Exemptions

- The exemption clause most frequently claimed by agencies from both State and local government sectors (excepting those claimed by Ministers and described below) was clause 3, which exempts from disclosure personal information about individuals other than the applicant. That clause was claimed 5,458 times in the

year under review. Continued use of that exemption to protect personal privacy is the most heavily relied upon exemption in Schedule 1 of the FOI Act.

- Other frequently claimed exemptions were as follows:

Exemptions claimed	#
Clause 5 (law enforcement, public safety and property security)	244
Clause 4 (certain commercial or business information of private individuals and organisations)	192
Clause 11 (documents that may impair the effective operation of agencies)	142
Clause 7 (documents which would be privileged from production in legal proceedings on the ground of legal professional privilege)	120
Clause 14 (information protected by certain statutory provisions)	115



Internal review

- 319 applications for internal review of decisions relating to access applications were received. This represents approximately 1.9% of all decisions made and approximately 23% of those decisions in which access was refused.
- 314 applications for internal review were dealt with. The decisions under review were:
 - confirmed on 194 occasions (almost 62% of all reviews);
 - varied on 94 occasions;
 - reversed on 18 occasions; and
 - withdrawn on 8 occasions.

- The review process resulted in 112 matters in which the initial decision was varied or reversed (35% of matters), which suggests the process is both an effective and important mechanism.

Amendment of personal information

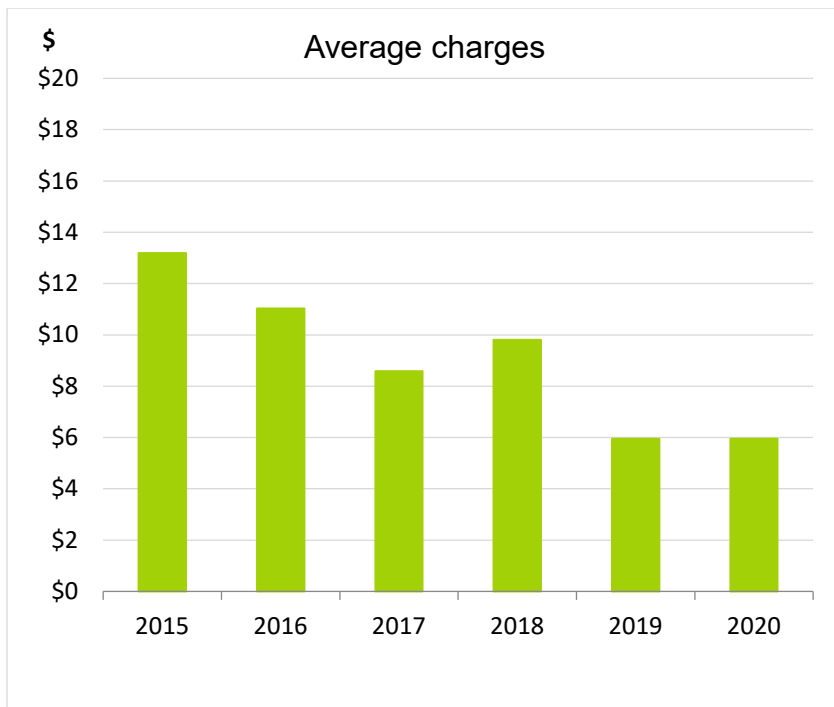
- 20 applications for amendment of personal information were received.
- A total of 13 applications were finalised:
 - information was amended on 3 occasions;
 - information was not amended on 6 occasions; and
 - information was amended, but not as requested, on 3 occasions.
- One of the applications received was subsequently withdrawn.
- Of the 3 applications for internal review of decisions relating to the amendment of personal information dealt with during the year, 2 decisions were made to confirm the original decision.

Access applications not dealt with in the permitted period

- 12.5% of access applications were not dealt with in the permitted period compared to 10.5% last year.
- 75% of agencies dealt with all their access applications in the permitted period, compared to 65% last year.

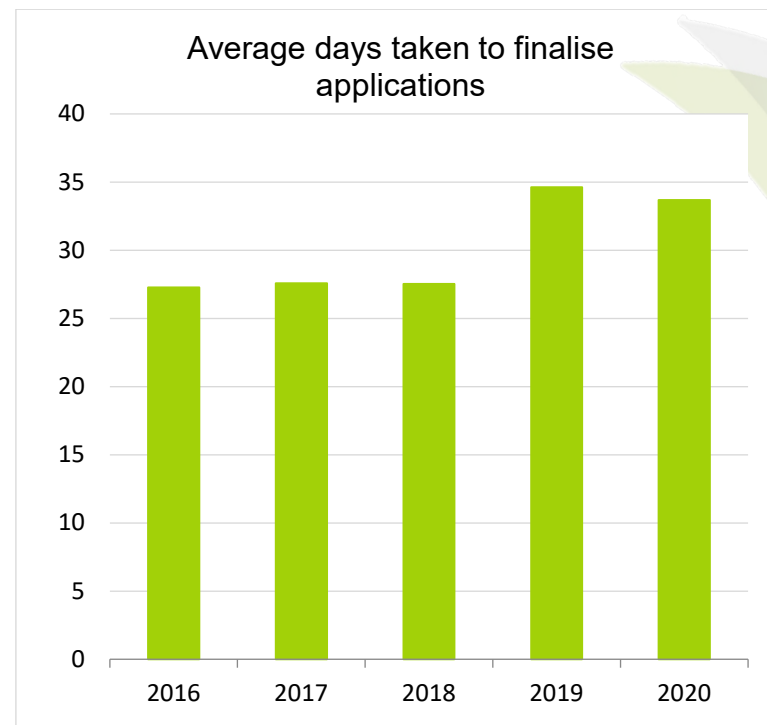
Average charges

The average charge imposed by agencies for dealing with access applications is the same as last year (\$5.95).



Average time

The average time taken by agencies to deal with access applications (33.7 days) is slightly lower than the previous year (34.63 days) and remains within the maximum period of 45 days permitted by the FOI Act.



Financial disclosures

- The external review services provided by the OIC are free of charge. The fees and charges prescribed by the FOI Act for making an FOI application are paid directly to the agency receiving the application.
- There were no workers' compensation claims made during the reporting period.
- There were no instances of a corporate credit card being used for private purchases.

Asset replacement

Until 2009/10, the OIC received capital appropriations from the Government every year for asset replacement, being for investment and replacement of general office assets such as PCs, printers, copiers, shredders and servers. In 2007/08 the capitalisation threshold was increased from \$1,000 to \$5,000 which prohibited the OIC using those capital appropriations for assets under \$5,000. This left an amount of \$36,000 of unspent capital appropriation in the OIC's bank account.

On advice from the then Department of Treasury and Finance, the unspent capital was retained until required. For the 2019/20 reporting period, a new strategic asset plan was submitted, and approved, to reinstate \$31,000 of capital to replace two fully depreciated assets: a document centre and a shredder. The submission also proposed to invest in a document management system.

The new document centre was ordered in February 2020, but delivery of the asset was delayed due to importation restrictions during the COVID-19 pandemic. The asset was received in July 2020.

Arrangements to purchase two other assets have also been delayed due to COVID-19.

Employment and industrial relations

Staff profile

	2020	2019
Full-time permanent	7	8
Full-time contract	1	3
Part-time measured on a FTE basis	2.2	2

Staff movements

The following staff appointments and changes were made during the year:

- The Acting Information Commissioner was permanently appointed from 16 July 2019 for a five year term.
- A six month contract appointment to the Paralegal role to temporarily cover the absence of the substantive occupant on unpaid leave, expired on 31 July 2019.
- The substantive occupant of the Paralegal position resigned, effective from 27 July 2019. This position remains vacant as of 30 June 2020 pending review and a recruitment process. In the meantime assistance is provided under a temporary staff contract.
- A recruitment process during 2018/19 resulted in a part-time permanent appointment to an Investigations/Legal Officer position on 22 July 2019. The officer commenced at 0.6 FTE equivalent, and increased to 0.8 FTE equivalent in February 2020.

- From 13 September 2019, the substantive occupant of the Principal Legal Officer position reduced their hours to 0.8 FTE equivalent (previously full-time).
- The substantive occupant of the Clerical Officer position commenced a 12 month secondment during 2018/19, during which the role was occupied by a redeployee. On 17 October 2019 the substantive occupant accepted permanency elsewhere in the public sector and resigned from the OIC. The redeployee was subsequently appointed to the position on a full-time permanent basis.
- The substantive occupant of the Information Services Manager position retired effective 1 November 2019. This position remains vacant as of 30 June 2020.
- From 15 May 2020, the substantive occupant of the Senior Legal Officer position increased their hours to full time (previously 0.8 FTE equivalent).
- In March 2020 a recruitment process for the appointment of two Investigations/Legal Officers was finalised. Due to restricted working arrangements in place as a result of COVID-19, the commencement of the appointments was postponed until July 2020.

Staff development

Continuing Staff Development (CPD)

The OIC employs legal practitioners who, under section 36(3) of the *Legal Profession Act 2008*, are taken to hold local practising certificates. Those legal practitioners maintain and broaden their legal knowledge by obtaining CPD points in

accordance with the *Legal Profession Rules 2009*. The OIC maintains a register of CPD points attained by each legal staff member.

Other professional development

Staff are encouraged to attend various learning opportunities that arise. During the period, over 30 events were attended by various staff members during the year. The increase in webinars and online training has provided greater opportunity for staff to attend more events.

In addition to seminars and workshops, when relevant, the OIC provides the opportunity for staff to achieve qualifications that promote skills development and career progress.

Governance disclosures

- No senior officers, or firms of which senior officers are members, or entities in which senior officers have substantial interests, had any interests in existing or proposed contracts with the OIC other than normal contracts of employment service.
- The OIC has no boards or committees, and therefore no remuneration costs in this regard.

Expenditure on advertising, market research, polling and direct mail

No expenditure was spent on advertising agencies, polling organisations, direct mail organisations or media advertising organisations.

Conflicts of interest

The OIC maintains a Conflicts of Interest Register. During the reporting period, two potential conflicts were registered by the officers concerned and appropriate measures were put in place to manage those potential conflicts.

Gifts register

The OIC has a gifts policy that has been modelled on the practice guide published by the Integrity Coordinating Group. This policy requires the maintenance of a gifts register, which is published on our [website](#). Small gifts for services provided (predominantly for briefings or speaking engagements) are generally accepted and shared within the office. Gifts that are promoting services or where a discretionary authority exists with the gift recipient (eg purchasing discretion), are declined.

During the reporting year, two gifts were registered as accepted.

Disability Access and Inclusion Plan

As required under the *Disability Services Act 1993*, the OIC publishes a Disability Access and Inclusion Plan (**DAIP**). The purpose of the DAIP is to ensure that people with a disability, their families, and carers are able to fully access the range of services and facilities of the OIC.

The DAIP outlines the seven desired outcomes the OIC has committed to achieving:

1. People with a disability have the same opportunities as other people to access the services of, and any events organised by, a public authority.
2. People with a disability have the same opportunities as other people to access the buildings and other facilities of a public authority.
3. People with a disability receive information from a public authority in a format that will enable them to access the information as readily as other people are able to access it.
4. People with a disability receive the same level and quality of service from the staff of a public authority as other people receive from the staff of that public authority.
5. People with a disability have the same opportunities as other people to make complaints to a public authority.
6. People with a disability have the same opportunities as other people to participate in any public consultation by a public authority.
7. People with a disability have the same opportunities as other people to obtain and maintain employment with a public authority.

The OIC's DAIP also addresses the issue of people with a disability being able to exercise their rights under the FOI Act. The FOI Act requires that applications must be made in writing, and the OIC recognises this may present an obstacle for people with a disability. As FOI applications are made directly to the relevant State or local government agency, the

onus is on those agencies to ensure all applicants have the same opportunity to make an FOI application. This is encapsulated in sections 11(2) and 11(3) of the FOI Act, which require agencies to take reasonable steps to help applicants to make a valid FOI application.

A yearly progress report on the initiatives in the DAIP has been lodged with the Department of Communities. The majority of strategies are ongoing practices, such as maintaining access to premises and employment opportunities that may arise. Specific strategies that aim to improve current services and practices are focussed on updating the OIC's website to make it more accessible, such as by including audio links and translations.

The DAIP is available on the OIC's [website](#), or copies can be requested from this office.

Compliance with Public Sector Standards and ethical codes

The OIC operates under an established code of conduct that references the WA Public Sector Code of Ethics (**the Code**). The OIC also has an employee grievance resolution policy in place. All new staff are provided with a copy of the Code and grievance policy as part of an induction pack, and these documents are also available to all staff on the OIC's knowledge management system.

After the Commissioner completed a CEO workshop on Accountability and Ethical Decision-making for accountable agency heads, OIC staff attended a similar workshop in October 2019, presented by the Public Sector Commission.

Complaints about the OIC

In October 2019 the OIC developed a policy document for dealing with a complaint about the actions or services of the Commissioner or OIC staff. The procedure encourages informal resolution and outlines the steps to initiate this as well as how to lodge a formal complaint.

The development of this policy was informed by the *Australian and New Zealand Standard Guidelines for complaint handling in organizations AS/NZS 10002:2014* and particularly by *Appendix A* of that Standard.

A copy of this procedure is available on the OIC's [website](#).

Occupational safety, health and injury management

The OIC is committed to an occupational safety, health and injury management system which has been established for the benefit of all staff. A documented injury management system is in place which is compliant with the *Workers' Compensation and Injury Management Act 1981* and the associated *Workers' Compensation Code of Practice (Injury Management) 2005*. This system has been formally introduced to staff and is made available through the OIC's knowledge management system.

Relevant staff are conversant with occupational health and safety and injury management policies, procedures and programs in order to meet legislative requirements, and all staff are provided the opportunity to report any issues at the monthly staff meetings via a standing agenda item for this

purpose. There were no reported injuries or fatalities during the reporting period (see [Table 14](#)).

Due to the retirement of the previous OHS representative in November 2019, an election for a new representative was held and the nominated officer attended the required introductory training course for safety and health representatives in December 2019.

An assessment of the OIC's occupational safety and health management system was proposed for 2019/20, but has been deferred.

Risk management

The OIC has an established Risk Management Steering Committee (**RMSC**). In early 2020, changes were made to its membership and meetings were held regularly to discuss and manage the risks posed by the COVID-19 pandemic. As outlined earlier in this report, the RMSC oversaw the revision and implementation of Business Continuity Management Plans, action plans and other relevant processes to ensure safety of staff, the community and the OIC's infrastructure.

Records management

The OIC reviewed its recordkeeping plan and provided its report to the State Records Office in December 2019. The following planned actions were committed:

- conducting a formal evaluation of the recordkeeping system;

- developing a records disaster recovery plan separate from the current recordkeeping plan and business continuity plan;
- creating a separate vital records register and include mechanisms for review;
- implementing the disposal policy; and
- testing of performance indicators for comparison to prior testing.

A full review of the recordkeeping plan was also scheduled to be finalised by 30 June 2020. However, due to other priorities during the COVID-19 pandemic and with approval from the State Records Office, this deadline was extended to March 2021.

The OIC is also proposing to digitise its recordkeeping practices and to include this change in the updated recordkeeping plan. Capital funds have been approved and set aside to purchase an electronic document management system for this project.