

# REPORT ON OPERATIONS

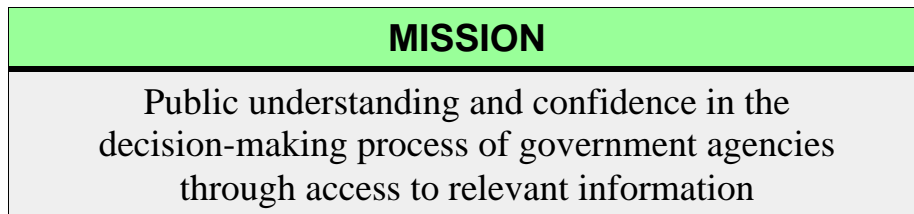
## LEGISLATION AND MISSION STATEMENT

The position of Information Commissioner is constituted under s.55(1) of the *Freedom of Information Act 1992* and the occupant is directly accountable to Parliament for the performance of statutory functions prescribed by the Act. I was appointed on 1 July 1993 and reappointed on 31 October 2000. The Attorney General is the Minister responsible for the legislation.

The main function of the position is to provide independent external review of agency decisions by dealing with complaints about decisions made by agencies under the Act. Other responsibilities, as prescribed by the Act, include:

- (i) ensuring that agencies are aware of their responsibilities under the Act [s.63(2)(d)];
- (ii) ensuring members of the public are aware of the Act and their rights under it [s.63(2)(e)];
- (iii) providing assistance to members of the public and agencies on matters relevant to the Act [s.63(2)(f)]; and
- (iv) recommending to Parliament legislative or administrative changes that could be made to help the objects of the Act be achieved [s.111(4)].

The Mission Statement and desired outcome reflect the functions and the broad ideals of openness, accountability and responsibility behind the FOI legislation.



### DESIRED OUTCOME

Access to documents and observance of processes in accordance with the *Freedom of Information Act 1992*.

The Office of the Information Commissioner provides an FOI complaint mechanism and advisory service which is independent, objective and fair, and which balances the competing needs of applicants, agencies and Parliament, subject to the requirements and processes prescribed in the Act. The Information Commissioner has a statutory duty to undertake these functions and the office accordingly has two outputs – Resolution of Complaints (External Review) and Advice and Awareness.

The following principles or values are part of the corporate philosophy of the office.

- Being accepted by participants as an independent and impartial review authority.
- Being recognised by agencies as a model of “best practice” for the FOI complaint review process.
- Serving as an example to agencies of accountability and responsibility.

### RELEVANT LEGISLATION

*Freedom of Information Act 1992*  
*Freedom of Information Regulations 1993*  
*Freedom of Information Amendment Regulations 1994*

### CONTACT DETAILS

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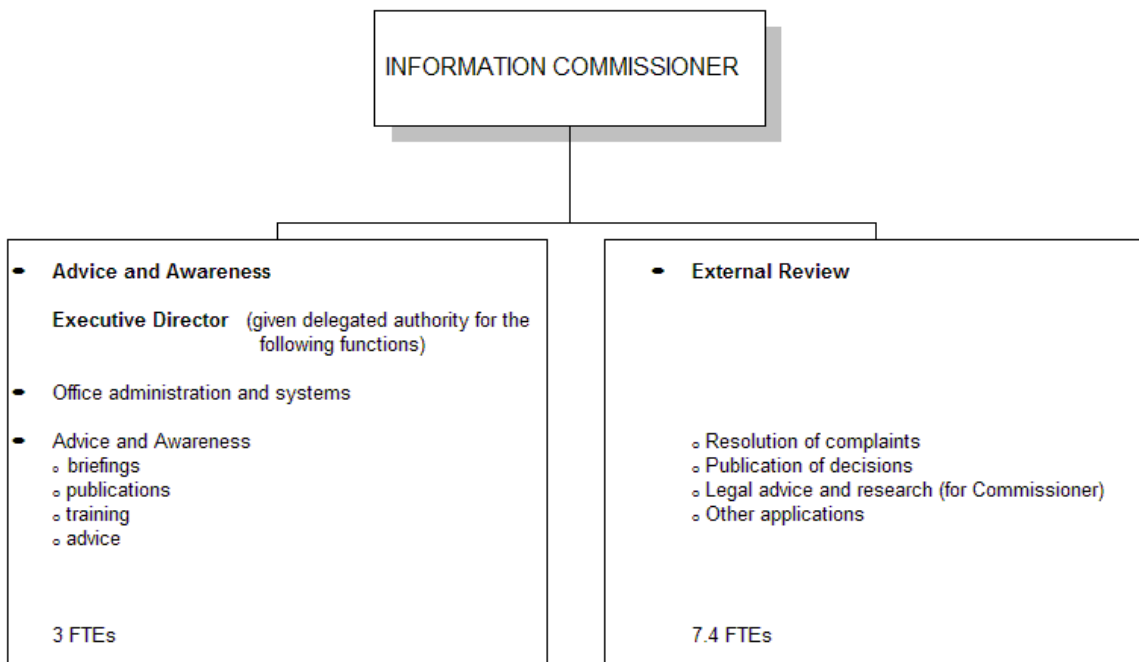
**STAFF**

Staff are appointed to assist me and new appointees must take an oath or affirmation, administered by me, prior to commencing their duties. The office is structured based on two separate outputs, which ensures that the independence and integrity of the external review process is maintained.



*Back row L to R: Kim Bracknell, Information Services Manager; Rachel Crute, Legal Officer (Research & Investigations); Tony Pruyn, Senior Investigations Officer; Sylvie de Laroche, Personal Assistant; Anne Marshall, Legal Officer; Vivien Hillyard, Investigations Officer.*  
*Front row L to R: Bronwyn Keighley-Gerardy, Information Commissioner; Bruce Denham, Executive Director; Tim Kennedy, Senior Legal Officer; Grace Grandia, Advisory/Projects Officer; Michelle Painter, Administrative Assistant.*

**OFFICE STRUCTURE**



**EXTERNAL REVIEW**

The external review output deals with complaints lodged by access applicants and third parties against decisions made by agencies and certain other applications. It emphasises informal resolution processes such as negotiation and conciliation where appropriate, and includes determinative functions which may involve more formal processes. The review function is designed to be as speedy, accessible and informal as possible. A policy decision was made to avoid adopting too legalistic or technical an approach to external review, but at the same time, recognising that it is necessary and desirable to conform with statutory requirements, the principles of administrative law and acceptable standards of practice for merit review.

**EXTERNAL REVIEW APPLICATIONS**

A total of 198 applications for external review were received in 2002/2003 (222 in 2001/2002). Table 1 indicates the kinds of applications received.

**TABLE 1: APPLICATIONS RECEIVED BY THE INFORMATION COMMISSIONER**

APPLICATIONS FOR EXTERNAL REVIEW	NUMBER
Complaints (including informal/invalid)	182
Section 66(4) Out of time	4
Section 66(6) No internal review	7
Sections 66(4) and 66(6) application	1
Waiver of requirement to consult	2
Application for extension of time	1
Request for destruction certificate	1
<b>TOTAL</b>	<b>198</b>

**COMPLAINTS**

Complaints may be made in respect of an agency’s decision to:

- refuse access to documents;
- give access to documents;
- give access to edited copies of documents;
- refuse to deal with access applications;
- defer giving access to documents;
- apply section 28 of the Act;
- impose a charge or require the payment of a deposit; or
- not to amend personal information or make a notation as requested.

During the year, 182 such complaints were received, compared with 188 in 2001/2002. Table 2 indicates the number of complaints and the agencies concerned.

**TABLE 2: COMPLAINTS RECEIVED**

AGENCY	COMPLAINTS	INVALID/ INFORMAL	TOTAL	AGENCY	COMPLAINTS	INVALID/ INFORMAL	TOTAL
Acacia Prison		1	1	Cambridge, Town of	1		1
Attorney General; Minister for Health; Electoral Affairs	1		1	Community Development, Department for	2	3	5
Bassendean, Town of	2		2	Consumer and Employment Protection, Department of	3		3
Bayswater, City of	1		1	Curtin University of Technology	2		2
Bridgetown-Greebushes, Shire of	2		2	Dental Health Services		1	1
Bunbury, City of	1		1	Deputy Premier; Treasurer; Minister for Energy	1		1
Busselton, Shire of	2	1	3	Education, Department of	4		4

AGENCY	COMPLAINTS	INVALID/ INFORMAL	TOTAL	AGENCY	COMPLAINTS	INVALID/ INFORMAL	TOTAL
Education and Training, Department of	6		6	Melville, City of	1	2	3
Electoral Commission	2		2	Midland College of TAFE		1	1
Environment, Water and Catchment Protection	6		6	Minerals and Petroleum Resources, Department of	2		2
Environmental Protection, Department of	2		2	Minister for Planning and Infrastructure	1		1
Equal Opportunity Commission	1		1	Minister for Police and Emergency Services; Justice; Community Safety	1		1
Fire and Emergency Services Authority	1		1	Minister for Racing and Gaming; Government Enterprises; Goldfields-Esperance	1		1
Fremantle, City of	1		1	Murray, Shire of	1		1
Fremantle Hospital and Health Service	1		1	Pharmaceutical Council of Western Australia	1		1
Fremantle Port Authority	1		1	Planning and Infrastructure, Department for	6		6
Geraldton, City of	1	1	2	Police Force of Western Australia	9	9	18
Gosnells, City of	2		2	Premier and Cabinet, Department of the	5	1	6
Government Railways Commission	1		1	Ravensthorpe, Shire of	2		2
Graylands Selby-Lemnos and Special Care Health Services	1	2	3	Royal Perth Hospital	1	4	5
Guardianship and Administration Board		1	1	Sir Charles Gairdner Hospital	1		1
Harvey, Shire of	1		1	South Perth, City of	3		3
Health, Department of	1	2	3	South West Area Health Service—Bunbury Network	1		1
Housing and Works, Department of	1	1	2	Sport and Recreation, Department of	3		3
Indigenous Affairs, Department of		1	1	Stirling, City of	2		2
Joondalup, City of	1		1	Swan, City of	1		1
Justice, Department of	3	25	28	Swan Health Service	1		1
King Edward Memorial and Princess Margaret Hospitals	2	1	3	University of Western Australia, The	1		1
Kojonup, Shire of	1		1	Vincent, Town of	1		1
Land Administration, Department of	1		1	Wanneroo, City of	1	2	3
Land Authority (LandCorp), Western Australian	1		1	Water Corporation	2		2
Legal Aid Western Australia	1		1	Workers Compensation and Rehabilitation Commission (WorkCover)	1	2	3
Legal Practice Board	1		1	York, Shire of	1		1
Medical Board of Western Australia	1		1	Unknown or No Jurisdiction		8	8
				<b>TOTAL</b>	<b>113</b>	<b>69</b>	<b>182</b>

**OTHER APPLICATIONS**

The other applications fell into the following categories:

- by access applicants or third parties for acceptance of complaints out of time pursuant to section 66(4) or without internal review pursuant to section 66(6), or for both of these reasons;
- by agencies for waiver of the requirement to consult with third parties when processing an application, pursuant to section 35;
- by agencies for extension of the permitted period of 45 days within which an agency must deal with an application (s.13(5)); and
- by agencies for Commissioner’s certification to obliterate or remove information or to destroy a document, pursuant to section 48(3).

A detailed breakdown follows.

**TABLE 3: OTHER APPLICATIONS RECEIVED**

AGENCY	OUT OF TIME s.66(4)	NO INTERNAL REVIEW s.66(6)	BOTH s.66(4) & s.66(6)	WAIVER OF NEED TO CONSULT s.35	EXTENSION OF TIME s.13(5)	REQUEST FOR DESTRUCTION CERTIFICATE s.48(3)
Consumer and Employment Protection, Department of					1	
Curtin University of Technology		1				
Education, Department of		1				
Fremantle Hospital and Health Service	1					
Great Southern Health Region						1
Joondalup, City of		1				
Justice, Department of		1				
Perth, City of	1	1				
Police Force of Western Australia	1	1				
Premier and Cabinet, Department of the				2		
South Perth, City of		1				
Totalisator Agency Board of Western Australia	1					
Water Corporation			1			
<b>TOTAL</b>	<b>4</b>	<b>7</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>

## EXTERNAL REVIEW OUTCOMES

A total of 200 applications were finalised during the year. Table 4 shows the types of applications dealt with.

Tables 5 and 6 show details of the outcomes of the matters dealt with during the year.

A total of 38 complaints proceeded to a published decision. Of those matters, the agency's decision was confirmed on 25 occasions; varied on 9 occasions; and set aside and substituted on 4 occasions.

In some cases, I will refer a matter to *Advice and Awareness* staff in order that the parties may be advised further as to their respective rights and obligations under the Act, or to enable preliminary enquiries to be made. This procedure often leads to a successful resolution of the matters. There were 64 applications resolved in this manner.

Pursuant to section 67(1)(b) of the Act, I decided not to deal with 21 complaints on the ground that they were either misconceived or lacking in substance.

TABLE 4: APPLICATIONS DEALT WITH

TYPE OF APPLICATION	NUMBER FINALISED
Complaints (including informal/invalid)	181
Section 66(4) Out of time	6
Section 66(6) No internal review	8
Waiver of requirement to consult	3
Application for extension of time	1
Request for destruction certificate	1
<b>TOTAL</b>	<b>200</b>

TABLE 5: OUTCOME OF COMPLAINTS FINALISED

AGENCY	CONCILIATED	PUBLISHED DECISION BY INFORMATION COMMISSIONER			DECLINED	RESOLVED BY ADVICE AND AWARENESS	TOTAL MATTERS FINALISED
		AGENCY DECISION CONFIRMED	AGENCY DECISION VARIED	AGENCY DECISION SET ASIDE AND SUBSTITUTED			
Acacia Prison					1	1	
Agriculture, Department of		1				1	
Armadale, City of	1					1	
Attorney General; Minister for Health; Electoral Affairs					1	1	
Bassendean, Town of	1		1		1	3	
Bayswater, City of					1	1	
Bridgetown-Greenbushes, Shire of		2				2	
Bunbury, City of	1					1	
Bunbury Regional Hospital and Health Service		1				1	
Busselton, Shire of	2		1		1	4	
Cambridge, Town of				1		1	

(cont...)

**TABLE 5: OUTCOME OF COMPLAINTS FINALISED (cont...)**

AGENCY	CONCILIATED	PUBLISHED DECISION BY INFORMATION COMMISSIONER			DECLINED	RESOLVED BY ADVICE AND AWARENESS	TOTAL MATTERS FINALISED
		AGENCY DECISION CONFIRMED	AGENCY DECISION VARIED	AGENCY DECISION SET ASIDE AND SUBSTITUTED			
Community Development, Department for	2	1	1			2	6
Consumer and Employment Protection, Department of	2						2
Curtin University of Technology	2						2
Dental Health Services						1	1
Education, Department of	3	2					5
Education and Training, Department of	2	1					3
Electoral Commission	1	1					2
Environment, Water and Catchment Protection, Department of	1	2	1				4
Environmental Protection, Department of	1						1
Equal Opportunity Commission	1						1
Fremantle, City of					1		1
Fremantle Hospital and Health Service	1						1
Fremantle Port Authority			1				1
Geraldton, City of	1					1	2
Gosnells, City of					1		1
Government Railways Commission	1	1					2
Graylands Selby-Lemnos and Special Care Health Services					1	2	3
Guardianship and Administration Board						1	1
Harvey, Shire of					1		1
Health, Department of	1				1	1	3
Housing and Works, Department of			1			1	2
Indigenous Affairs, Department of						1	1
Insurance Commission of Western Australia	1				1		2
Joondalup, City of					1		1
Justice, Department of	2	1				25	28
King Edward Memorial and Princess Margaret Hospitals	1	1				1	3
Kojonup, Shire of	1						1
Land Administration, Department of		1					1
Legal Aid Western Australia	1						1
Legal Practice Board	1						1
Medical Board of Western Australia	1						1



**TABLE 5: OUTCOME OF COMPLAINTS FINALISED (cont...)**

AGENCY	CONCILIATED	PUBLISHED DECISION BY INFORMATION COMMISSIONER			DECLINED	RESOLVED BY ADVICE AND AWARENESS	TOTAL MATTERS FINALISED
		AGENCY DECISION CONFIRMED	AGENCY DECISION VARIED	AGENCY DECISION SET ASIDE AND SUBSTITUTED			
Melville, City of	1				2		3
Midland College of TAFE						1	1
Minerals and Petroleum Resources, Department of	2						2
Minister for Police; Emergency Services; Justice; Community Safety	1						1
Minister for Racing and Gaming; Government Enterprises; Goldfields-Esperance	1						1
Murray, Shire of				1			1
Pharmaceutical Council of Western Australia			1				1
Planning and Infrastructure, Department for	4		1		1		6
Police Force of Western Australia	2	5			2	9	18
Premier and Cabinet, Department of the	2	1			3	1	7
Ravensthorpe, Shire of						2	2
Rottneest Island Authority	1						1
Royal Perth Hospital	1					4	5
Sir Charles Gairdner Hospital	1						1
South Perth, City of	1			1	1		3
South West Area Health Service—Bunbury Network	1						1
Sport and Recreation, Department of	1	1					2
Stirling, City of	1				1		2
Swan, City of	2						2
Swan Health Service		1					1
University of Western Australia	1						1
Victoria Park, Town of			1				1
Vincent, Town of		1					1
Wanneroo, City of	1				1		2
Water Corporation	1			1			2
Workers Compensation and Rehabilitation Commission (WorkCover)		1				2	3
York, Shire of	1						1
Unknown or no jurisdiction						7	7
<b>TOTAL</b>	<b>58</b>	<b>25</b>	<b>9</b>	<b>4</b>	<b>21</b>	<b>64</b>	<b>181</b>

**TABLE 6: PUBLISHED DECISIONS**

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0232002	BGC (Australia) Pty Ltd	Fremantle Port Authority	11/7/02
D0242002	"E"	Town of Bassendean	12/07/02
D0252002	"F"	South West Health	15/07/02
D0262002	Thomson	Department of Agriculture	15/07/02
D0272002	Portman Iron Ore Ltd	Western Australian Government Railways Commission	17/07/02
D0282002	"G"	Department for Community Development	30/07/02
D0292002	Borthwick	Town of Victoria Park	13/08/02
D0302002	Leong	Town of Cambridge	15/08/02
D0312002	Nield and Nield	Police Force of Western Australia	04/10/02
D0322002	Stewart	Department for Community Development	10/10/02
D0332002	Friehe	Department of Education	24/10/02
D0342002	Norbury	Police Force of Western Australia	28/10/02
D0352002	Dewan	Department of Environment, Water and Catchment Protection	30/10/02
D0362002	Michail	Police Force of Western Australia	11/11/02
D0372002	Kasprzak	Department of the Premier and Cabinet	14/11/02
D0382002	Temwood Holdings Pty Ltd	Department for Planning and Infrastructure	22/11/02
D0392002	Poole *	Department of Justice and Police Force of Western Australia	22/11/02
D0402002	Ogden	City of South Perth	27/11/02
D0412002	Hawken	Police Force of Western Australia	02/12/02
D0012003	Wines	Shire of Bridgetown-Greenbushes	02/01/03
D0022003	East and East	Water Corporation	03/01/03
D0032003	Tobin	Department of Education	29/01/03
D0042003	Crisp	Department of Land Administration	06/02/03
D0052003	Richardson	Swan Health Service	20/02/03
D0062003	Fordham	Pharmaceutical Council of Western Australia	25/02/03
D0072003	Swift	Shire of Busselton	11/03/03
D0082003	"A"	Department of Sport and Recreation and Rechichi	13/03/03
D0092003	Cockburn	Department of Education and Training	13/03/03
D0102003	Walters	Town of Vincent	14/03/03
D0112003	E G Green and Sons Pty Ltd	Department of Environment, Water and Catchment Protection	17/03/03
D0122003	Ford	Department of Housing and Works	04/04/03
D0132003	Lyll	Workers Compensation and Rehabilitation Commission	14/04/03
D0142003	Mineralogy Pty Ltd	Department of Environment, Water and Catchment Protection and Yamatji Barna Baba Maaja Aboriginal Corporation	16/04/03
D0152003	"AA"	King Edward Memorial and Princess Margaret Hospitals	06/05/03
D0162003	Macnish	Shire of Bridgetown-Greenbushes	13/05/03
D0172003	West Australian Newspapers Ltd	Western Australian Electoral Commission	16/06/03
D0182003	"Y"	Shire of Murray and Others	17/06/03

\* Decision number D0392002 decided two complaints because, where more than one complaint concerns the same parties and documents and similar issues, they may be dealt with in one decision. All published decisions are available on our web site at <http://www.foi.wa.gov.au>

**OTHER MATTERS**

There were 19 other applications finalised this year and these, together with the outcomes, are shown below.

**TABLE 7: OUTCOME OF OTHER MATTERS FINALISED**

AGENCY	OUT OF TIME s.66(4)		NO INTERNAL REVIEW s.66(6)			WAIVER OF NEED TO CONSULT s.35		EXTENSION OF TIME s.13(5)	REQUEST FOR DESTRUCTION CERTIFICATE s.48(3)	TOTAL MATTERS FINALISED
	W	R	A	W	R	A	D	W	W	
Consumer and Employment Protection, Department of								1		1
Curtin University of Technology						1				1
Education, Department of						1				1
Fremantle Hospital and Health Service		1								1
Great Southern Health region									1	1
Joondalup, City of						1				1
Justice, Department of		1								1
Minister for Planning and Infrastructure		1								1
Perth, City of		1				1				2
Police Force of Western Australia		1				1				2
Premier and Cabinet, Department of the							2	1		3
South Perth, City of						1				1
Totalisator Agency Board of Western Australia		1								1
Wanneroo, City of						1				1
Water Corporation						1				1
<b>TOTAL</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>2</b>	<b>5</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>19</b>

Key: A—Approved; C—Conciliated; W—Withdrawn; R—Refused; D—Denied

**APPEALS TO THE SUPREME COURT**

Three appeals from my decisions were filed with the Supreme Court of Western Australia during the year:

- The first, BGC (Australia) Pty Ltd and Fremantle Port Authority (D0232002) has been heard by the Supreme Court (SJA No. 1095 OF 2002) but the judgment of the Court has not been delivered;
- The second, Thomson and Department of Agriculture (D0262002) has been lodged but not yet heard by the Supreme Court (SJA No. 1094 of 2002); and
- The third, Temwood Holdings Pty Ltd and the Department for Planning and Infrastructure (D0382002) has been heard by the Supreme Court (SJA 1135 of 2002) and on 30 May 2003 the Supreme Court upheld my decision and dismissed the appeal ([2003] WASCA 112).

**TABLE 8: EXTERNAL REVIEW TARGETS AND OUTCOMES**

	TARGET	OUTCOME
Applications finalised	190	200
Satisfaction with review process	90%	85%
Average days to finalise matters	20	13
Cost per application	\$4,642	\$4,645

**FEEDBACK FROM PARTICIPANTS IN THE EXTERNAL REVIEW PROCESS**

To facilitate ongoing continuous improvement initiatives in my processes to raise the performance of the office to the highest level possible, a survey of all participants (both applicants and the staff of the relevant agency) is conducted after each external review is completed. A written questionnaire is administered and returned confidentially. The survey seeks each participant’s views on whether there was an objective and fair hearing with emphasis on user friendly processes which meet their needs. Satisfaction levels are very high as indicated in Table 8 above, and the comments below are typical of the overall feedback received over the last 10 years.

**Comments from applicants -**

*“I was very impressed with the way matters were handled and in particular with the ease with which I could talk confidentially to your legal officer.”*

*“I am very pleased with the speed and efficiency conducted by the officers.”*

*“I do consider that I was kept adequately informed regarding the progress of my case and was amazed at what lengths my investigating officer went to, i.e. to make sure that I was aware of the procedures and stages of my case and even when I withdrew my application before the Information Commissioner I found her to be exceptional.”*

*“Very prompt and helpful, especially in regards to what our rights were under the Act.”*

*“I was impressed with the courtesy, professionalism and efficiency shown in the handling of this matter.”*

*“The officer assigned to the case was informative and helpful during the process of the appeal and provided extra information to assist in the resolution of the request.”*

**Comments from agencies –**

*“I was very grateful to be kept so well informed as this was my first FOI external review.”*

*“The Shire was provided with a great deal of information and assistance in a very timely fashion throughout what was a very lengthy and complicated review process.”*

*“This was a quite complicated FOI matter that related to a very difficult and contentious situation. I think all parties involved were treated properly and fairly and that the review was conducted in a very professional manner. I am grateful for the information and assistance I received and learned a lot about particular FOI and records related legal issues as a result of the process.”*

*“I have always found the assigned officer to be exceptionally professional and willing to assist in smoothing the process to ensure satisfaction to all parties concerned.”*

*“I was confident with the officer’s processing of the complaint and his professional attitude.”*

*“Unbiased expert delivery of conciliatory issues and good statement of outcomes expected of this agency.”*

## ADVICE AND AWARENESS

The *Advice and Awareness* output is administered by the Executive Director by way of a formal delegation. Applicants and agencies are provided with assistance in exercising their respective rights and obligations and how to follow the correct processes for dealing with an application under the FOI Act. Policy development within agencies is encouraged so that the obligations placed on agencies by the FOI Act minimise the impact on their day-to-day operations. Many potential disputes are resolved informally with the assistance of my staff.

The output undertakes functions on my behalf, as follows:

- training courses for agency staff;
- targeted workshops/seminars;
- provision of assistance, briefings and advice to agencies on the processes required by the FOI Act;
- visits to country regions;
- visits to and meetings with agencies or applicants in order to assist in resolving difficulties being experienced in dealing with FOI requests;
- responding to enquiries and requests for comment from the media;
- briefings to community groups;
- production of articles providing advice and guidance on the workings of the FOI Act;
- distribution of brochures to assist applicants;
- answering enquiries by e-mail, telephone or at the counter;
- dealing with general correspondence;
- maintenance of statistical data and other information to assist me in reporting to Parliament; and
- executive support for me including matters relating to the management and funding of the office.

## TRAINING COURSES AND BRIEFINGS

The Office is proactive in raising the awareness and understanding of the procedures and processes prescribed by the FOI Act. Apart from requests received for training or assistance, needs in the public sector are identified from a survey of agencies. Due to staff turnover, there is a periodic need by agencies for new staff to be briefed on the FOI process and their obligations. This is done by conducting special forums, briefings, seminars, or presentations to FOI Coordinators and decision-makers. These are conducted on an interactive basis, allowing for immediate response to questions and clarification of issues concerning FOI procedures and practices. The office provides a speaker in response to an invitation from any organisation requiring an explanation of the FOI process.

In all courses and briefings an emphasis is placed on policy development to assist agencies to minimise the impact of FOI on the day to day responsibilities of agencies.

### FOI Coordinator Workshops

Workshops are scheduled based on the level of demand and are conducted by the office, at no charge to the agencies.

Eight one-day FOI Coordinator workshops were held during the year in the metropolitan and regional areas. The course introduces participants to the FOI legislation and the requirements which must be observed during the processing and deciding an application. Each session covers requests for information and the process to follow; exemptions; third party

consultation; fees and charges; notices of decision and the role of the Information Commissioner. Participants have the opportunity to raise issues of concern and have the process explained to them in a practical way. Participants meet staff of this office who can be contacted should they require assistance when dealing with FOI requests. A comprehensive manual is provided to each participant at the course, for future reference.

The workshops continue to be hosted at the premises of various State and local government agencies who have offered the use of a venue. Thanks to those agencies, this results in costs being kept to a minimum, not only to this office, but also to the agencies.

Feedback from participants who attended the workshops is very positive. The following comments written by participants in the "course evaluation" form at the end of each workshop are typical responses received consistently over this and previous years:

*"Excellent course, very informative and useful manual. Both presenters were very knowledgeable, able to cite practical examples to illustrate relevant points and were able to offer positive suggestions for identified problems".*

*"The course was well presented in a logical manner with support material and case histories that will provide backup when addressing FOI applications."*

*"Workshop manual is well laid out and informative. Slide presentation very easy to see and read. In depth knowledge of both presenters made for a thorough presentation."*

*"The course provided good coverage of the Act. The manual appears very comprehensive and will be of assistance. Well presented. Questions raised clearly explained."*

*"Very easy to follow and understand. Manual used in conjunction with powerpoint presentation very effective. Good examples used to further explain topics. Presenters were very knowledgeable and were good at encouraging interaction and welcoming questions."*

*"The course was excellent. It gave me a better understanding of FOI."*

### **FOI Decision-makers**

The half-day decision-makers course assists staff in agencies, including senior managers who may have to be the decision-maker in respect of an application. It covers the options available to agencies when responding to large applications; assisting an applicant re-define the scope of the application; recommended procedures before refusing to deal with an application; the process of decision making; exemptions; the public interest test; the preparation of a notice of decision that complies with the FOI Act and the internal and external review processes. Attendees also establish contact with staff of my office who may be called for advice in the future, which is especially useful for those agencies which do not receive applications very often.

### **FOI Briefings**

General briefings are tailored to deal with particular topics and to meet agency specific needs. The briefing outlines the FOI Act and its processes relevant to the organization's functions. Other topics covered are the application of particular exemptions; an overview of the notice of decision requirements and the review process. These briefings provide the officers attending the opportunity to clarify any issues of concern in dealing with FOI and generally be more aware of the obligations placed on their agency, even though they may not be directly involved in dealing with applications.

Over 400 officers attended the FOI Coordinators Workshops, or Decision-makers courses or general briefing sessions which were conducted this year.

The following table lists the main training events and other briefings during the year.

TABLE 9: FORMAL TRAINING AND PRESENTATIONS

DATE	AUDIENCE
07 August 2002	FOI Coordinators Workshop <i>Hosted by Department of Minerals and Petroleum Resources</i>
26 August 2002	Murdoch University
16 September 2002	Murdoch University
26 September 2002	Local Government Managers Australia
09 October 2002	FOI Coordinators Workshop <i>Hosted by City of Joondalup</i>
17 October 2002	FOI Coordinators Workshop <i>Hosted by Central West College of TAFE, Geraldton</i>
23 October 2002	FOI Coordinators Workshop <i>Hosted by C Y O'Connor College of TAFE, Northam</i>
30 October 2002	FOI Coordinators Workshop <i>Hosted by City of Stirling</i>
01 November 2002	Office of State Revenue
06 November 2002	FOI Coordinators Workshop <i>Hosted by City of Gosnells</i>
11 February 2003	FOI Coordinators Workshop <i>Hosted by Shire of Capel</i>
12 February 2003	Decision-makers Forum <i>Hosted by Shire of Capel</i>
12 February 2003	FOI Briefing <i>Shire of Augusta-Margaret River</i>
11 March 2003	FOI Coordinators Workshop <i>Hosted by Department of Consumer and Employment Protection</i>
25 March 2003	FOI Briefing <i>Department of Sport and Recreation</i>
08 April 2003	Decision-makers Forum <i>Hosted by Department of Consumer and Employment Protection</i>
23 April 2003	FOI Briefing (Perth) <i>Port Hedland Port Authority</i>
06 May 2003	FOI Briefing <i>Main Roads</i>
11 June 2003	FOI Briefing <i>Family Pathways</i>

## WEB SITE AND ELECTRONIC COMMUNICATIONS

My web site ([www.foi.wa.gov.au](http://www.foi.wa.gov.au)) contains an extensive amount of information about the FOI process. The web site is structured into sections including, *What is FOI?* which describes the objects of the FOI Act; *Publications* which contains the FOI Act and Regulations; brochures and articles giving guidance on the FOI process and *Frequently Asked Questions (FAQ's)*. Of additional assistance are *guides* to some of the most frequently cited exemption clauses which aid in their understanding and what needs to be established when claiming the exemption. A further section *Need Help with FOI?* provides information for applicants, agencies and third parties. My role is described in the section *About the Information Commissioner*. A major section contains the *Decisions* made by me.

The web site allows searches of my published decisions to be conducted in a variety of ways, such as searching by Agency or Complainant Name; by exemption clause or section of the FOI Act; by catchword, and many more. This is a valuable resource for agencies and members of the public to refer to my previous decisions and take note of the interpretation given to particular exemptions and sections of the FOI Act. Such ready access to precedents contributes to a higher level of understanding and application of the legislation by decision-makers.

There are also links to other related web sites. A section containing *What's New/Training* contains the latest news and training information available. *Contact Us* provides address, telephone, facsimile and e-mail information.

Our web site has been praised for its user friendly links and the amount of information readily available. There has been a steadily increasing number of user sessions (up by 70% in the last 8 months), which illustrates a high level of interest in FOI generally; the process to follow in making an application; and in my published decisions. Any suggestions regarding the site or resources available online are welcome and appreciated: please send them to info@foi.wa.gov.au.

E-mail is utilised by the Office wherever possible. Data, such as annual statistics from agencies and responses from participants to surveys of satisfaction levels, is also obtained through this medium where possible or via forms which can be completed and submitted online via our website. A snapshot of the home page follows.



## DEALING WITH CERTAIN TYPES OF APPLICATIONS

Cases referred to Advice and Awareness staff by me require the provision of assistance to either the complainant or the agency concerned, or both. In some cases advice is given about respective rights and obligations under the FOI Act. In others, preliminary enquiries are made to assist in continuing and finalising the application in accordance with the proper FOI process. The outcome of this practice is generally the successful resolution of the matter, and a reduction in the level of disputes or complaints at a later stage.

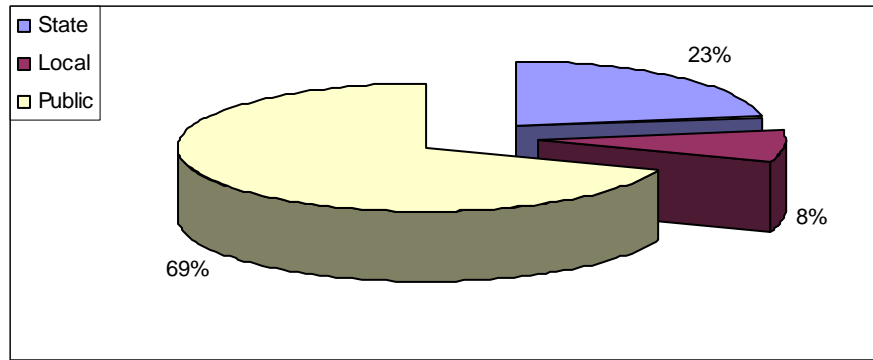
## TELEPHONE ENQUIRIES

There were 1,879 telephone calls received during the year (up 8%). Nearly 70% of telephone calls received were from members of the public seeking advice on how to make an application, or to enquire about or confirm their review rights. The balance were from officers of State and local government agencies seeking assistance in dealing with particular access applications or advice regarding other statutory obligations under the Act.

Overall, over 60% of the time expended on telephone calls was spent advising agencies of the FOI process and responding to their enquiries.

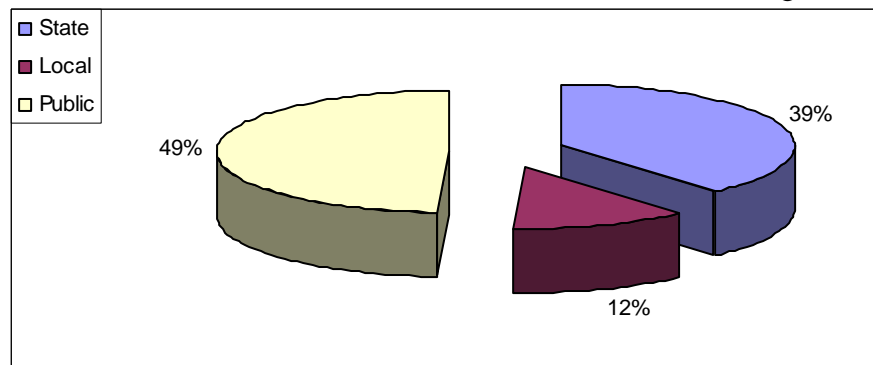


**FIGURE 5: TOTAL TELEPHONE CALLS**



State 430; local 145; public 1304

**FIGURE 6: TOTAL TIME ANSWERING TELEPHONE ENQUIRIES**



Time spent in minutes: State 3612; local 1145; public 4604

**TABLE 10: ADVICE AND AWARENESS TARGETS AND OUTCOMES**

	TARGET	OUTCOME
Number of applications	5500	6660
Client satisfaction with services	(a)	(a)
Timeliness of return phone calls	same day	same day
Response time to written enquiries	2 days	1-2 days
Cost per application	\$58	\$56.74

(a) Previously annual surveys were administered to all state and local government agencies. The results indicated a consistently high level of satisfaction with the advisory services provided by the office (98%), so in order to reduce the burden on agencies the survey is conducted every 2 years. It will be conducted again in 2004.

## ADMINISTRATION

The functions I am required to perform result in the development and delivery of a range of services to the public, agencies and Parliament:

- dispute resolution
- advice about the FOI Act and procedures
- copies of decisions made by the Information Commissioner
- access to agency Information Statements
- distribution of awareness raising and educational material
- talks and information sessions for community groups
- free call telephone line for country callers
- web site at <http://www.foi.wa.gov.au>
- telephone advisory service
- FOI training sessions
- specifically tailored meetings or advisory sessions for agencies
- advice and assistance to Members of Parliament and their electorate office staff regarding the FOI process
- Annual Report on the workings of the legislation

The Office has a Customer Service Charter and Code of Conduct, which all staff are required to observe. Copies are available on request.

Performance Standards have been established to ensure that all staff undertake their duties in a manner that is a credit to the professional and independent status of the Office.

### STAFF CHANGES

There were no staff changes during the year.

### SUPPORT SERVICES

Corporate service support, consisting of financial and human resources services including workplace safety, disability services, equal employment and language services when required, is provided by the Department of Justice under a service agreement. Due to the small size of the office, human resource reporting requirements are met by the Department. The assistance provided by relevant staff of the Department of Justice is acknowledged and appreciated.

### COMPLIANCE WITH OTHER ACTS

The office complies with all legislative requirements and associated reporting requirements, including the *Occupational Health Safety and Welfare Act 1984*. No health or safety issues arose for attention and there were no lost time incidents or workers' compensation claims.

There was no expenditure incurred on advertising, market research polling, direct mail or media advertising activities during the year.

The office fully participates in a recycling arrangement with the Exchange Plaza building management and recycles 100% of waste paper, cardboard, glass, plastics and aluminum.

## Review of FOI Practices in the Department for Community Development

The Department is established under the *Community Services Act 1972*. Administration of the Act and control of the Department is vested in the Minister for Community Development, Women's Interests, Seniors and Youth Disability Services; Culture and the Arts. The main function of the Department is to improve the social wellbeing of Western Australians by developing the capacity of individuals, families and communities to shape their lives positively. Services provided by the Department include, support and counselling, child protection, crisis support, foster care, support for community groups, and funding for services.

The Department collects and maintains paper files and electronic records and has access to an extensive archive of documents. Most paper documents are contained in Client Files, Administrative Files, Adoption Files and Personnel Files.

The computer system that holds most of the electronic documents relating to the Department's Client and Community Services is an integrated system that has consolidated information recorded separately on three other client record systems. The Department manages its client and administrative files using the TRIM system.

The Department has a dedicated FOI Unit with responsibility for FOI matters, including administration and coordination of requests. The FOI Unit creates a new file for each application, enters the relevant details into its data base, and tracks the progress of each request.

During May and June 2003, the FOI practices of the Department for Community Development were reviewed by a Review Team from my office. The purpose of the review was to examine the manner in which the Department deals with FOI requests and to determine the extent to which the Department has embraced FOI principles of openness and accountability and incorporated those into its management practices.

The review consisted of three parts:

- Analysis of the Department's FOI statistics for the period 1994 - 2003;
- Examination of the Department's FOI Application files for the calendar year 2002; and
- Examination of internal policy and procedure documents and staff interviews.

A total of 94 FOI files created by the Department in the 2002 calendar year were examined, and consideration given to such matters as the levels of assistance provided; notices of decision, initially and following internal review; degree of confidentiality and impartiality; timeliness; fees and charges; and discretionary disclosures.

The Review Team also examined policy and procedure documents produced by the Department and interviewed selected staff with day to day responsibilities for FOI matters. Policy and procedure documents examined included:

- Information Statement dated July 2003;
- FOI Procedures Manual dated June 1998;
- FOI – Summary of Procedures;
- Director General's Instruction No. 16;
- Part 4.3.2 of the Best Practice Manual; and
- Delegations Manual.

The Review Team had regard to the level of internal training; the nature of advice provided to applicants; procedures to facilitate disclosures outside the FOI Act; content and currency of the Information Statement; and number and nature of internal manuals published.

The Review Team found:

- The Department deals with FOI requests in confidence and on their merits. There was no obvious bias by decision-makers.
- Proper reasons are given when access is refused.
- Applications are dealt with in a timely manner and discretionary disclosures are made routinely when no harm is likely.
- A program exists in the Department to increase awareness of staff about FOI issues and to train existing and new personnel.

#### **Part 5 of the FOI Act – Publication of information about agencies**

The FOI Act requires agencies to publish certain information about their operations, policies and practices, especially those that impact directly on the lives of citizens. Publication requirements include an up-to-date Information Statement and internal manuals, and copies of those documents should be available for inspection and purchase by members of the public.

## ***Information Statement***

An Information Statement enables an applicant to understand the kinds of documents held by an agency and should assist an applicant to identify and describe the particular documents he or she requires.

The current Information Statement for the Department is available from the Information Services section, selected branch offices and the State Library. Following the review, the Department arranged for the current Information Statement to be available from all branch offices and published it on the Department's Internet website. The Information Statement refers to a catalogue of manuals, handbooks and guidelines that are available from the Information Services section of the Department, but does not describe the contents of those manuals, handbooks or guidelines in any detail.

## ***Internal Manuals***

Agencies are also required to make available for inspection or purchase, copies of each of its internal manuals, including policy manuals and documents containing rules, guidelines and practices used by the agency in connection with the performance of its functions, which are likely to affect the rights, privileges, benefits, obligations, penalties or other benefits to which the public are or may become entitled, eligible, liable or subject.

Internal manuals contain the 'hidden law' applied by agencies. They are the rules, guidelines and criteria used by agencies when making decisions in particular cases. The manuals are invaluable tools that assist the public to find out why an agency reached a particular decision about, for example, eligibility for benefits or assistance, or the criteria to qualify for support from the agency.

Internal manuals are the kinds of documents that structure decision-making in agencies. The definition of 'internal manual' in s.95 of the FOI Act makes it clear that the kinds of documents which must be published are more than mere handbooks of instructions. Internal manuals can be policy directives, precedents, guidelines, rules, letters of advice or information from other sources.

It is the policy of the Department that its internal manuals are available for inspection and they are generally available free of charge. However, the Review Team found that the internal manuals (as defined in the FOI Act) of the Department were not described with sufficient particularity in the Information Statement to enable the Review Team to identify those documents and, accordingly, the Review Team were unable to conclude whether or not the Department fully complies with the publication requirements of s.97(1)(b) of the FOI Act.

Accordingly, when the Information Statement is updated, I recommend:

1. That the kinds of documents held by the agency are described in as much detail as possible so that the public can more easily identify the documents; and
2. That particular attention is given to the identification and description of the kinds of internal manuals that are available for inspection or purchase.

## ***Review Conclusions***

Overall, no issues of major concern were identified. It was concluded that the Department complies with its obligations under the FOI Act; demonstrates a commitment to FOI principles; and reflects its commitment in its internal management practices. In particular, the Review Team found a positive attitude amongst staff towards the FOI Act and a commitment to providing information informally wherever possible.

During the year only six matters involving the Department were dealt with by my Office. Two were resolved after advice to the applicant, two complaints were conciliated, and two decisions were published by me, one of which confirmed the agency's decision and the other was varied. I attribute this low level of complaints to the policies and procedures, which exist in the Department, and to a management culture that is focussed on the needs of its clients, including providing access to personal information.

In summary, I consider the Department to be one which demonstrates best practice when it comes to dealing with FOI issues. Whilst there will always be difficult clients who are unlikely to be satisfied by any decision made under the FOI Act, those are in the minority and they do not detract from the FOI outcomes achieved by the Department.