

# REPORT ON OPERATIONS

## LEGISLATION AND MISSION STATEMENT

The office of Information Commissioner is established by s.55(1) of the *Freedom of Information Act 1992* (The FOI Act) and the occupant is directly accountable to Parliament for the performance of statutory functions prescribed by the FOI Act. The Acting Information Commissioner is appointed under s.59(1) and is empowered to exercise all the functions of the Information Commissioner. The Attorney General is the Minister responsible for the legislation in the Parliament.

The main function of the office is to provide independent external review of agencies' decisions by dealing with complaints about decisions made by agencies under the FOI Act. Other responsibilities prescribed by the FOI Act include:

- (i) ensuring that agencies are aware of their responsibilities under the FOI Act [s.63(2)(d)];
- (ii) ensuring members of the public are aware of the FOI 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 FOI Act [s.63(2)(f)]; and
- (iv) recommending to Parliament legislative or administrative changes that could be made to help the objects of the FOI 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.

MISSION
Public understanding and confidence in the decision-making process of government agencies through access to relevant information

### DESIRED OUTCOME

The primary desired outcome is 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 FOI Act. The Information Commissioner has a statutory duty to undertake these functions and the office accordingly has two service teams – 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*

**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 teams, *Advice and Awareness* and *Resolution of Complaints (External Review)*, which ensures that the independence and integrity of the external review process is maintained.

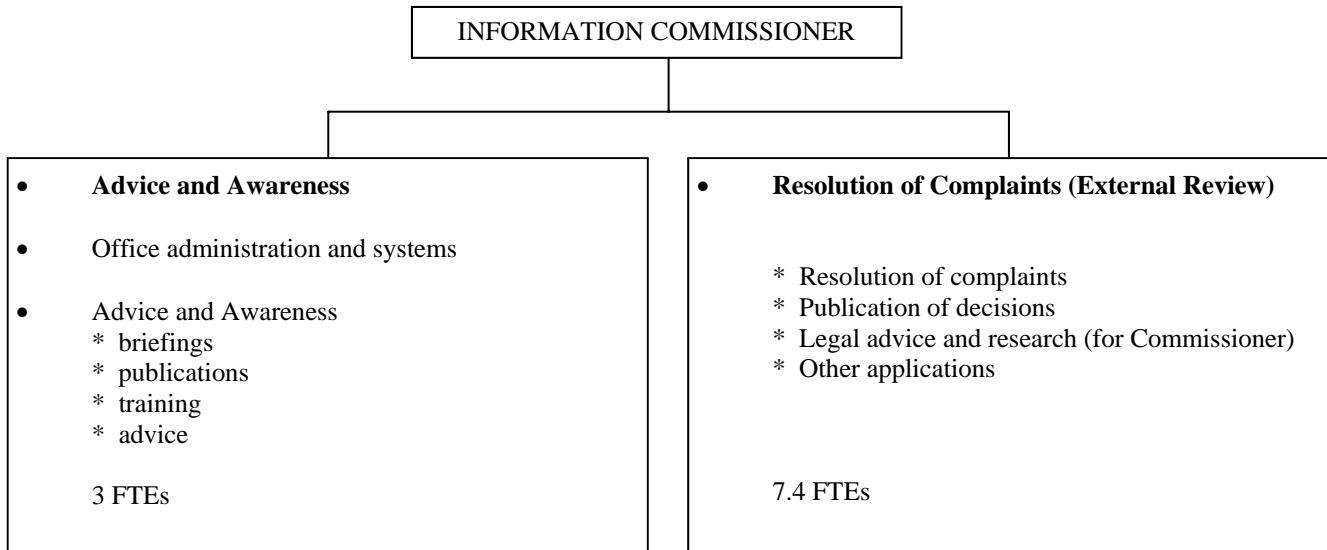


*Back row L to R: Vivien Hillyard, Investigations Officer; Rachel Crute, Legal Officer (Research and Investigations); Darryl Wookey, A/Information Commissioner; Kim Bracknell, Information Services Manager; Tim Kennedy, Senior Legal Officer.*

*Front row L to R: Anne Marshall, Legal Officer; Michelle Painter, Administrative Assistant; Grace Grandia, Advisory/Projects Officer; Sylvie De Laroche, Personal Assistant.*

*Absent: Tony Pruyn, Senior Investigations Officer; Jo Merrick (seconded, returned to the Ombudsman's Office).*

## OFFICE STRUCTURE



## EXTERNAL REVIEW

The *Resolution of Complaints (External Review)* team deals with complaints lodged by access applicants, applicants for amendment of personal information and third parties against decisions made by agencies. The external review team also deals with applications made under ss.13(4), 13(5), 35(1), 66(4) and 66(6) of the FOI Act.

The emphasis is on informal resolution processes such as conciliation and negotiation where appropriate and, where conciliation cannot be achieved, the determinative function, which involves more formal processes, is undertaken. The external review process is intended to be as speedy, accessible and informal as possible. Accordingly, it is the policy of the office to avoid, where possible, too technical an approach to external review, whilst recognizing that it is necessary and desirable for the external review process to conform to the statutory requirements of the FOI Act, the principles of administrative law and acceptable standards of practice in merit review.

As indicated in last year's annual report and in the foreword to this report, the measures by which we assess our performance and record and report on our work have been reviewed. The resultant changes to the way in which matters dealt with are classified and the method of calculation of some of our performance indicators are explained in more detail in the "Performance Indicators" section of this report. Of particular relevance to the external review function is that, following that review, the kinds of matters classified as "complaints" has changed. In the annual reports for at least the previous three years, a number of matters included in the figures for complaints received and dealt with were more properly classified requests for advice or were misdirected access applications, that is, access applications sent to my office instead of to the agency concerned. From this year, those matters are separately identified; are not included in the numbers of complaints received and dealt with; and are reported on as part of the Advice and Awareness service. As a result, the numbers of complaints received and dealt with this year cannot be compared with the numbers received and dealt with in the previous few years, although in the Performance Indicators section of this report both calculation methods are shown to enable comparisons to be made for this transitional year. The old calculation method will not be used at all after this year and the revised classifications and reporting will provide a more accurate picture going forward.

In the reporting period, a total of 260 new applications were received by my office. Of those 260 new applications, 106 were complaints made under s.65(1) or s.65(3) of the FOI Act and 37 were informal or invalid complaints. Nineteen were applications made under ss.66(4) and 66(6) of the FOI Act; four were applications made under ss.13(4) or 13(5) of the FOI Act; and two were applications made under s.35(1) of the FOI Act for waiver of the requirement to consult with third parties, in accordance with the requirements of ss.32 and 33 of the FOI Act. These matters were dealt with by the *Resolution of Complaints (External Review)* team and are reported on as part of the external review output and form the basis of the performance indicators relating to that output.

Eighty three of the applications received by my office in the reporting period were misdirected access applications that were erroneously sent to my office by the access applicant instead of to the relevant agency and nine were requests for advice and/or assistance from my office about matters relating to the FOI Act. These matters were dealt with by the *Advice and Awareness* team and are reported as part of the advice and awareness output and are included, with other things, in the figures which form the basis of the performance indicators relating to that output.

The number of applications received which were properly classified as applications for external review of decisions of agencies was 143. This means that only 1.85% of all applications dealt with by agencies under the FOI Act in the reporting period resulted in complaints being lodged with my office. Of those, the 37 which have been classified as informal/invalid complaints were those in which the complainant sought to make a complaint to my office but the statutory requirements for making a complaint were not met. Those included, for example, matters in which the complainant endeavoured to lodge his or her complaint with me without first seeking internal review from the relevant agency, the complaint was lodged out of time or the complaint was about the manner in which an agency had handled the access application, but was not a complaint about a decision of a kind set out in s.65(1) or s.65(3) of the FOI Act.

An unusual feature of the reporting period was that almost one quarter (26 out of 106) of the total number of valid complaints made to my office were lodged by seven complainants. In most cases, the second or third complaints received from those complainants were in relation to successive access applications made to the same agency by the same complainant.

## EXTERNAL REVIEW APPLICATIONS

A total of 168 applications, composed of 143 applications for external review (complaints) and 25 other kinds of applications under the FOI Act, were received in 2004/2005. Table 1 shows the kinds of applications received.

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

APPLICATIONS FOR EXTERNAL REVIEW	NUMBER
Complaints (including informal/invalid)	143
Section 66(6) applications (No internal review)	13
Section 66(4) applications (Out of time)	5
Sections 66(4) and 66(6) applications	1
Section 35(1): Waiver of requirement to consult	2
Section 13(4): Applications for reduction of time	3
Section 13(5): Applications for extension of time	1
<b>TOTAL</b>	<b>168</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 FOI Act;
- impose a charge or require the payment of a deposit; or
- not to amend personal information or make a notation as requested.

Table 2 Shows a summary of complaints received by agency type.

**TABLE 2: COMPLAINTS RECEIVED (BY AGENCY CATEGORY)**

AGENCY TYPE	COMPLAINTS		INVALID		TOTAL	
	No.	%	No.	%	No.	%
State	84		29		113	79
Minister	7		1		8	6
Local	15		4		19	13
Other			3		3	2
<b>TOTAL</b>	<b>106</b>	<b>74</b>	<b>37</b>	<b>26</b>	<b>143</b>	<b>100</b>

Table 3 details the number of complaints received in 2004/05 and the agencies concerned.

**TABLE 3: COMPLAINTS RECEIVED**

AGENCY	COMPLAINTS	INVALID	TOTAL	AGENCY	COMPLAINTS	INVALID	TOTAL
Acacia Prison	1		1	Land Authority (Landcorp), Western	2		2
Agriculture, Department of	1		1	Land Information, Department of	1		1
Attorney General; Minister for Health; Electoral Affairs	1	1	2	Legal Aid Western Australia	1		1
Bayswater, City of	1		1	Local Government and Regional Development, Department of	1	1	2
Bentley Health Service	1	1	2	Main Roads Western Australia		1	1
Canning, City of	1		1	Mandurah, City of	1		1
Claremont, Town of	1		1	Minister for Local Government and Regional Development; Heritage; The Kimberley, Pilbara and Gascoyne	1		1
Community Development, Department for	1		1	Minister for State Development	2		2
Consumer and Employment Protection, Department of	6	1	7	Minister for State Development; Energy	1		1
Deputy Premier; Treasurer; Minister for Energy	2		2	Murdoch University	2		2
Edith Cowan University	5	2	7	Nedlands, City of	1		1

TABLE 3: COMPLAINTS RECEIVED (cont...)

AGENCY	COMPLAINTS	INVALID	TOTAL	AGENCY	COMPLAINTS	INVALID	TOTAL
Education and Training, Department of	6	2	8	Physiotherapists Registration Board		1	1
Environment, Department of	4		4	Planning and Infrastructure, Department for	1	4	5
Fremantle, City of	1		1	Police Force of Western Australia	14	10	24
Graylands Selby-Lemnos and Special Care Health Service	2		2	Public Sector Standards Commissioner, Office of the	1		1
Great Southern Health Region		1	1	Rockingham, City of	1		1
Guardianship and Administration Board	1		1	Roebourne, Shire of	1		1
Harvey, Shire of	1		1	South Perth, City of	1	1	2
Health, Department of	3	1	4	South West Development Commission		1	1
Health Review, Office of	1		1	State Administrative Tribunal	1		1
Housing and Works, Department of	3	1	4	Stirling, City of	2		2
Industrial Relations Commission, Office	1	1	2	Swan, City of	1		1
Industry and Resources, Department of	7		7	Treasury and Finance, Department of	2		2
Inquiry into the City of Joondalup	1		1	University of Western Australia	3		3
Insurance Commission of Western	1		1	Wanneroo, City of		1	1
Joondalup, City of	2	2	4	Water Corporation	3		3
Justice, Department of	3		3	Western Power Corporation	4		4
King Edward Memorial and Princess		1	1	Unknown Agency		3	3
				<b>TOTAL</b>	<b>106</b>	<b>37</b>	<b>143</b>

## OTHER APPLICATIONS

Other applications received fell into the following categories:

- by applicants or third parties to lodge complaints out of time pursuant to section 66(4) or without internal review pursuant to section 66(6), or both;
- by agencies for waiver of the requirement to consult with third parties when processing an application, pursuant to section 35(1); and
- by applicants for reduction of the permitted period of 45 days within which an agency must deal with an application (s.13(4)) and by agencies seeking an extension of the permitted period (s.13(5)).

Twenty five such applications were received in 2004/05, the same number as in the previous year.

A detailed breakdown follows.

**TABLE 4: OTHER APPLICATIONS RECEIVED**

AGENCY	OUT OF TIME s.66(4)	NO INTERNA L REVIEW s.66(6)	BOTH s.66(4) & s.66(6)	WAIVER OF REQ'MENT TO CONSULT s.35(1)	REDUCTION OF TIME s.13(4)	EXTENSION OF TIME s.13(5)	TOTAL
Attorney General; Minister for Health; Electoral Affairs				1			1
Augusta-Margaret River, Shire of		1					1
Edith Cowan University					1		1
Housing and Works, Department of	1	1					2
Insurance Commission of Western Australia					1		1
King Edward Memorial and Princess Margaret					1		1
Main Roads Western Australia				1			1
Minister for Planning and Infrastructure	1						1
Peel Development Commission			1				1
Planning and Infrastructure, Department for		1					1
Police Force of Western Australia	1	8					9
South Perth, City of		1					1
South West Health Service	1						1
University of Western Australia						1	1
Veterinary Surgeons' Board of Western Australia	1	1					2
<b>TOTAL</b>	<b>5</b>	<b>13</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>25</b>

**EXTERNAL REVIEW OUTCOMES**

A total of 155 applications were finalised during the year. Table 4 shows the types of applications dealt with.

**TABLE 5: APPLICATIONS DEALT WITH**

TYPE OF APPLICATION	NUMBER
Complaints (including informal/invalid)	133
Section 66(4) Out of time	5
Section 66(6) No internal review	11
Application for reduction of time	3
Application for extension of time	1
Application for Waiver of Requirement to Consult	2
<b>TOTAL</b>	<b>155</b>



Table 6 shows a summary of the outcomes of complaints finalised during the year, by agency category.

**TABLE 6: OUTCOME OF COMPLAINTS FINALISED (BY AGENCY CATEGORY)**

AGENCY TYPE	CONCILIATED		PUBLISHED DECISION		DECLINED		TOTAL	
	No.	%	No.	%	No.	%	No.	%
State	80		22		8		110	82.7
Minister	5		0		1		6	4.5
Local	7		3		4		14	10.5
Other	3		0		0		3	2.3
<b>Total</b>	<b>95</b>	<b>71.4</b>	<b>25</b>	<b>18.8</b>	<b>13</b>	<b>9.8</b>	<b>133</b>	<b>100</b>

It can also be seen from that table that only 20% of complaints concerning decisions of State Government agencies and 22% of complaints concerning decisions of local government agencies required resolution by formal decision. Resolution by conciliation was achieved in 73% of complaints concerning State Government agencies' decisions, 50% of complaints concerning local government agencies' decisions and 84% of complaints concerning decisions by Ministers.

Tables 7 and 8 show details of the outcomes of the complaints dealt with during the year.

A total of 133 complaints were finalised, 25 of which proceeded to a published decision. Of those matters, the agency's decision was confirmed on 18 occasions; varied on 5 occasions; and set aside and substituted on 2 occasions. Of those 133 matters, only 96 were formal complaints, as defined in s.65 of the FOI Act. Of the 96 complaints resolved in 2004/05, 63 (66%) were resolved by conciliation, without the need for a formal decision.

**TABLE 7: OUTCOME OF COMPLAINTS FINALISED**

AGENCY	CONCILIATED	PUBLISHED DECISION BY INFORMATION COMMISSIONER			DECLINED UNDER s.67(1)(a) & s.67(1)(b)*	TOTAL MATTERS FINALISED
		AGENCY DECISION CONFIRMED	AGENCY DECISION VARIED	AGENCY DECISION SET ASIDE AND SUBSTITUTED		
Agriculture, Department of		1				1
Attorney General; Minister for Health; Electoral Affairs	1				1	2
Bayswater, City of		1				1
Bentley Health Service	2					2
Community Development, Department for	4					4
Conservation and Land Management, Department of		1			1	2
Consumer and Employment Protection, Department of	4	1				5
Coorow, Shire of	1					1
Culture and the Arts, Department of	2					2
Deputy Premier; Treasurer; Minister for Energy	1					1
Edith Cowan University	3	3				6

**TABLE 7: OUTCOME OF COMPLAINTS FINALISED (cont...)**

AGENCY	CONCILIATED	PUBLISHED DECISION BY INFORMATION COMMISSIONER			DECLINED UNDER s.67(1)(a) & s.67(1)(b))*	TOTAL MATTERS FINALISED
		AGENCY DECISION CONFIRMED	AGENCY DECISION VARIED	AGENCY DECISION SET ASIDE AND SUBSTITUTED		
Education and Training, Department of	5				1	6
Environment, Department of	6		1			7
Fremantle, City of					1	1
Graylands Selby-Lemnos and Special Care Health Service	3					3
Great Southern Health Region	1					1
Guardianship and Administration Board		1				1
Harvey, Shire of					1	1
Health, Department of	3	2				5
Health Review, Office of	1					1
Housing and Works, Department of		2	1		1	4
Industrial Relations Commission, Office of the Registrar					1	1
Industry and Resources, Department of	7			1		8
Inquiry into the City of Joondalup	1					1
Insurance Commission of Western Australia				1		1
Joondalup, City of					2	2
Justice, Department of	2					2
King Edward Memorial and Princess Margaret Hospitals	1					1
Land Information, Department of	1					1
Legal Aid Western Australia	1					1
Local Government and Regional Development, Department	2					2
Main Roads Western Australia	1					1
Mandurah, City of	1					1
Melville, City of		1	1			2
Minister for State Development *	2					2
Minister for State Development; Energy *	1					1
Nedlands; City of	1					1
Physiotherapists' Registration Board	1					1
Planning and Infrastructure, Department for	6					6
Police Force of Western Australia	15	1			3	19
Premier and Cabinet, Department of the			1			1
Public Advocate, Office of the	1					1
Public Sector Standards Commissioner, Office of the	1					1
Rockingham, City of	1					1

**TABLE 7: OUTCOME OF COMPLAINTS FINALISED (cont...)**

AGENCY	CONCILIATED	PUBLISHED DECISION BY INFORMATION COMMISSIONER			DECLINED UNDER s.67(1)(a) & s.67(1)(b) * *	TOTAL MATTERS FINALISED
		AGENCY DECISION CONFIRMED	AGENCY DECISION VARIED	AGENCY DECISION SET ASIDE AND SUBSTITUTED		
Sir Charles Gairdner Hospital	1					1
South Perth, City of	2					2
South West Development Commission	2					2
Tourism Commission					1	1
Treasury and Finance, Department of	1	2				3
University of Western Australia			1			1
Wanneroo, City of	1					1
Water Corporation	1	1				2
Western Power Corporation	1	1				2
Unknown Agency	3					3
<b>TOTAL</b>	<b>95</b>	<b>18</b>	<b>5</b>	<b>2</b>	<b>13</b>	<b>133</b>

\* Listed separately due to the redistribution of Ministerial portfolio responsibilities during the reporting period.

\*\* The Information Commissioner does not deal with a complaint if it is outside jurisdiction or is frivolous, vexatious, misconceived or lacking in substance (section 67 of the Act).

**TABLE 8: PUBLISHED DECISIONS**

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0142004	Van de Klashorst	Melville, City of	24/08/04
D0152004	Lyll	Insurance Commission of Western Australia	26/08/04
D0162004	Bartucciotto	Guardianship and Administration Board	02/09/04
D0172004	Garcia-Valle	Consumer and Employment Protection, Department of	13/10/04
D0182004	Spackman	Environment, Department of	2/11/04
D0192004	Mallet	Edith Cowan University	10/12/04
D0202004	Mallet	Edith Cowan University	10/12/04
D0212004	Williamson	Health, Department of	16/12/04
D0222004	Anderson	Water Corporation	22/12/04
D0232004	Bowden	Housing and Works, Department of	22/12/04
D0012005	Hancock Prospecting Pty Ltd	Industry and Resources, Department of	25/01/05
D0022005	Rhodes	Agriculture, Department of	15/02/05
D0032005	Bowden	Housing and Works, Department of	18/03/05
D0042005	Mahony	Melville, City of	30/03/05
D0052005	Conservation Council of Western Australia Inc.	Conservation and Land Management, Department of	08/04/05
D0062005	Michail	Housing and Works, Department of	18/04/05
D0072005	Mallet	Edith Cowan University	11/05/05

**TABLE 8: PUBLISHED DECISIONS (cont...)**

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0082005*	Schatz	Treasury and Finance, Department of	13/05/05
D0092005	Manning	University of Western Australia	26/05/05
D0102005	West Australian Newspapers Ltd	Western Power Corporation	30/05/05
D0112005	"T"	Health, Department of	09/06/05
D0122005	Wills	Premier and Cabinet, Department of the	10/06/05
D0132005	West Australian Newspapers Ltd	Bayswater, City of	10/06/05
D0142005	Fabbri	Police Force of Western Australia	29/06/05

\* Please note that two applications were decided by D0082005

**OTHER MATTERS**

There were 22 other applications finalised this year. They were applications to make a complaint out of time (s.66(4)) or where internal review had not been applied for or had not been completed (s.66(6)); applications for waiver of the requirement to consult third parties (s.35(1)); applications for a reduction of the permitted time for an agency to deal with an access application (s.13(4)); applications for an extension of the permitted time for an agency to deal with an access application (s.13(5)). These, together with the outcomes, are shown in Table 9.

**TABLE 9: OUTCOME OF OTHER APPLICATIONS FINALISED**

AGENCY	NO INTERNAL REVIEW			OUT OF TIME s.66(4)			REDUCTION OF TIME s.13(4)			EXTENSION OF TIME S.13(5)			WAIVER OF REQUIREMENT TO CONSULT			TOTAL MATTERS FINALISED
	A	R	C	A	R	C	A	R	C	A	R	C	A	R	C	
Attorney General; Minister for Health; Electoral Affairs															1	1
Edith Cowan University								1			1					2
Housing and Works, Department of		1			1											2
Insurance Commission of Western Australia									1							1
King Edward Memorial and Princess Margaret Hospitals									1							1
Main Roads Western Australia														1		1
Minister for Planning and Infrastructure						1										1
Planning and Infrastructure, Department of	1															1
Police Force of Western Australia		2	6			1										9
South West Health Service						1										1
Veterinary Surgeons' Board of Western Australia		1				1										2
<b>TOTAL</b>	<b>1</b>	<b>4</b>	<b>6</b>	<b>3</b>	<b>2</b>		<b>3</b>	<b>1</b>					<b>1</b>	<b>1</b>		<b>22</b>

Key: A—Approved; C—Conciliated; R—Refused

## APPEALS TO THE SUPREME COURT

One appeal from a decision I made was filed with Supreme Court of Western Australia during the past year and was determined by the Supreme Court of Western Australia in June 2005. In *Department of Housing and Works v Bowden* [2005] WASC 123, the Supreme Court upheld the Department's appeal against my decision, set aside my decision and decided that the documents the subject of my decision were exempt documents under clause 7 (legal professional privilege) of Schedule 1 to the FOI Act.

Last year I also reported that there was one outstanding appeal still before the Supreme Court arising from a decision of the former Information Commissioner. That appeal, *Re Thompson and Department of Agriculture* WAICmr [2002] 26, has not yet been heard by the Supreme Court.

## ADVICE AND AWARENESS

The *Advice and Awareness* team provides members of the public and agencies with advice and assistance in exercising their respective rights and obligations and how to follow the correct procedures for making or dealing with an application under the FOI Act. Policy development within agencies is encouraged so that the impact of the obligations imposed on agencies by the FOI Act on their day-to-day operations is minimised. Many potential disputes are resolved informally with the assistance of my staff.

The team undertakes the following functions:

- 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;
- provision of advice and assistance to members of the public on the procedure for exercising their rights under the FOI Act;
- 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 in reporting to Parliament; and
- executive support 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 in 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 for 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.

## **FOI Coordinator Workshops**

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

Six 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 of 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.

A benefit of the shared resources since collocation with other accountability agencies is that we were able to host all the FOI Coordinators Workshops in 2004/05 at our own premises. In previous years, the workshops were hosted at the premises of various State and local government agencies who kindly offered the use of a venue. Feedback from participants who attended the workshops was very positive.

## **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 many applications. Three of these were conducted in 2004/05, attended by a total of 29 officers of State Government agencies and 27 officers of local government agencies.

## **FOI Briefings**

A number of formal briefings, presentations and training sessions were conducted throughout the year under review. Those given by the A/Commissioner personally were:

- an informal briefing to the Public Administration Committee of the Legislative Council of the Parliament (20 September 2004);
- three lectures to Administrative Law Students at the University of Western Australia (October 2004);
- an address to new Members of Parliament on the operation of the FOI Act and the role of the Information Commissioner (16 March 2005);
- presentation on the confidentiality provisions of the FOI Act at an IPAA seminar entitled "Comply with Confidence" (7 April 2005);
- talk to the CEOs and staff of the other collocated accountability agencies on FOI and the role of the Information Commissioner (14 April 2005);
- briefing on the Information Commissioner model to the Director of the Centre for the Implementation of Public Policies Promoting Equity and Growth (CIPPEC), Argentina, by telephone link to the Department of Foreign Affairs and Trade in Canberra (22 April 2005);

- workshop for FOI practitioners in Argentina (participated as international guest) on “implementation of access to information policies” (27 April 2005);
- address to International Seminar on Access to Public Information, held in Buenos Aires, Argentina (28 April 2005); and
- FOI Coordinator’s Workshop, with the Advisory/Projects Officer (15 June 2005).

General briefings are tailored in each case to meet the needs of applicants or agencies. Other briefings given by staff of the office are shown in Table 10.

**TABLE 10: FORMAL TRAINING AND PRESENTATIONS**

DATE	PRESENTATION STYLE	AUDIENCE
27 July 2004	FOI Briefing	<i>Office of the Auditor General</i>
28 July 2004	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
30 July 2004	FOI Briefing	<i>Balga Campus of Swan TAFE</i>
06 August 2004	FOI Briefing	<i>City of Melville</i>
27 August 2004	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
31 August 2004	Decision-makers Forum	<i>Officers from State and local government agencies</i>
19 October 2004	FOI Briefing	<i>Office of Racing, Gaming &amp; Liquor</i>
19 November 2004	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
08 December 2004	Decision-makers Forum	<i>Officers from State and local government agencies</i>
24 January 2005	FOI Briefing	<i>Shire of Augusta/Margaret River (Councillors)</i>
25 January 2005	FOI Briefing (1)	<i>Shire of Augusta/Margaret River (Staff)</i>
25 January 2005	FOI Briefing (2)	<i>Shire of Augusta/Margaret River (Staff)</i>
21 February 2005	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
16 March 2005	Decision-makers Forum	<i>Officers from State and local government agencies</i>
22 March 2005	FOI Briefing	<i>FOI Coordinators Group held at Department of Industry &amp; Resources</i>
24 April 2005	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
15 June 2005	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
30 June 2005	FOI Briefing	<i>State Records Office</i>

**In this financial year six ‘FOI Coordinators Workshops’ were conducted. Officers from the following agencies attended (number in attendance shown in brackets):**

Bentley Health Service (1)	Department of the Premier & Cabinet (1)	Public Transport Authority (1)
City of Canning (2)	Department of Treasury & Finance (6)	Shire of Dandaragan (1)
City of Mandurah (2)	Drug & Alcohol Authority (1)	Shire of Serpentine/Jarrahdale (1)
City of Stirling (3)	Edith Cowan University (8)	Swan Health Services (1)
Department Conservation and Land Management (2)	Fisheries Department (1)	Town of Bassendean (1)
Department for Community Development (1)	Forest Products Commission (1)	Town of Cottesloe (1)



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Department of Consumer & Employment Protection (6)	Department of Health (1)	Town of East Fremantle (1)
Department of Education & Training (12)	Medical Board (2)	Town of Victoria Park (1)
Department of Environment (3)	Murdoch University (1)	University of WA (2)
Department of Housing & Works (2)	Narrogin Hospital (1)	Valuer General's Office (1)
Department of Indigenous Affairs (1)	Office of Health Review (1)	West Coast TAFE (1)
Department of Industry & Resources (3)	Office of the Public Sector Standards Commissioner(1)	Western Power Corporation (1)
Department of Justice (1)	Peel Development Commission (1)	
Department of Land Information (2)	Perth Zoo (1)	

### Three 'Decision-makers Forums' were held and included officers from the following agencies:

City of Fremantle (1)	Department of Consumer & Employment Protection (13)	Department of Planning & Infrastructure (2)
City of Mandurah (2)	Department of Education (5)	Murdoch University (1)
City of Rockingham (24)	Department of Environment (1)	Office of the Minister for the Environment (1)
Department of Conservation & Land Management (2)	Department of Industry & Resources (2)	Workcover (2)

## WEB SITE AND ELECTRONIC COMMUNICATIONS

The office web site ([www.foi.wa.gov.au](http://www.foi.wa.gov.au)) contains an extensive amount of information about the FOI process. It 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; *Frequently Asked Questions (FAQ's)* which contains guides to some of the most frequently cited exemption clauses; *Need Help with FOI?*; *About the Information Commissioner*; and *Decisions* which contains searchable copies of all formal decisions made on complaints.

The web site allows searches of 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 research 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.

From next year on, it is proposed also to include summaries of selected conciliated complaints to give agencies and members of the public some idea of alternative means of dealing with applications and resolving complaints.

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.

We have received positive feedback about our web site, particularly for its user-friendly links and the



amount of information readily available. There has been a steadily increasing number of user sessions, which illustrates a high level of interest in FOI generally; in 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](mailto:info@foi.wa.gov.au).

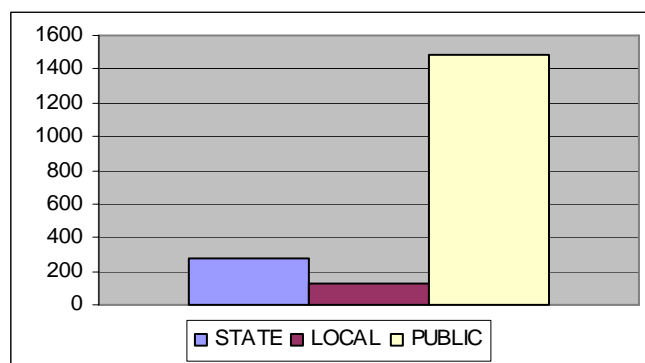
E-mail is utilised by the Office wherever possible. Data, such as annual statistics from agencies and responses from participants to surveys of satisfaction levels, is also obtained through this medium where possible or via forms which can be completed and submitted online through our website.

## TELEPHONE ENQUIRIES

There were 1,899 telephone calls received during the year (1,845 in 2003/04). Over 78% of telephone calls received (74% in 2003/04) 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 access applications or advice regarding other statutory obligations under the Act.

Approximately 50% 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 277; local 126; public 1486

## WRITTEN ENQUIRIES

In recent years, written requests for advice and misdirected access applications have been included in the figures for complaints received and dealt with. As indicated elsewhere in this report, as a result of a review of the manner in which we record and report on our work and the calculation of our performance indicators, these matters are now separately identified and reported on as part of the Advice and Awareness output as they are dealt with almost exclusively by members of the Advice and Awareness team. The average turnaround time for responses to written enquiries of this nature is two days.

There were 173 written enquiries received and dealt with during the year. Ninety four were received by posted letter and 79 by email. Twenty four were received from officers of agencies and 149 from members of the public. Of those, 83 were misdirected access applications which should have been sent to the agency holding the documents sought and 90 were requests for advice. All of these resulted in advice being given to the correspondent as to the proper procedures to be followed. In some cases, where the enquiry was from an applicant concerning a particular application, enquiries were also made with the agency concerned to ascertain the status of the application to assist this

office in responding helpfully to the applicant and, if necessary, advice was also given to the agency in those cases.

The agencies the subject of the greatest number of misdirected applications (Police Force of Western Australia and Department of Justice) were contacted and steps that could be taken to ensure that people seeking to make applications to those agencies are properly advised how to go about it were discussed. Most of the misdirected applications relating to the Department of Justice (the ‘DOJ’) were from prisoners. The DOJ reviewed its application form given to prisoners and now includes clear details of where they must send their completed applications. The main cause of misdirected applications relating to the Police Service appears to have been police officers in police stations referring applicants to my office rather than to the Police Service’s FOI Unit. The Officer in Charge of the Police FOI Unit subsequently circularized all police stations, as he has done previously, advising of the correct procedure.

Table 11 shows a summary of applications that were mistakenly directed to this office instead of to the agency holding the documents.

**TABLE 11: MISDIRECTED APPLICATIONS RECEIVED**

AGENCY	TOTAL	AGENCY	TOTAL	AGENCY	TOTAL
Armadale Health Service	2	Indigenous Affairs, Department of	1	Royal Perth Hospital	1
Bunbury, City of	1	Justice, Department of	26	Stirling, City of	1
Community Development, Department	4	Land Information, Department of	1	WorkSafe Western Australia	1
Education and Training, Department of	2	Planning and Infrastructure, Department	2	Unknown Agency	6
Housing and Works, Department of	1	Police Force of Western Australia	33	<b>TOTAL</b>	<b>82</b>

## 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:

- complaint resolution;
- advice about the FOI Act and procedures;
- publication of decisions made by the Information Commissioner;
- 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; and
- 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

As a result, in the main, of changing needs of the office following the move to shared accommodation with other accountability agencies in June 2004, the position of Executive Director was abolished and the occupant, Mr Bruce Denham, accepted voluntary redundancy.

Ms Rachel Crute (Legal Officer, Research and Investigations) was seconded to the Office of the Ombudsman for part of the year and, in a reciprocal arrangement with the Ombudsman, Ms Jo Merrick was seconded to this Office for a period of 6 months, to act in the position of Legal Officer, Research and Investigations.

Mr Tony Pruyn, Senior Investigations Officer, was seconded to the Corruption and Crime Commission for a period of 7 weeks to assist in the Commission's investigation into "Protecting Personal Data in the Public Sector".

## SUPPORT SERVICES

Corporate service support, consisting of financial and human resources services including workplace safety, disability services, equal opportunity 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

Compliance with legislative and associated reporting requirements which apply to the office and are not dealt with elsewhere in this report is reported below.

*Disability Services Act 1993 (s.29):* Development of a Disability Services Plan was not initiated pending, firstly, collocation which required moving premises and, secondly, the proposed amalgamation of the offices of Information Commissioner and Ombudsman. However, now that collocation has occurred but the timeframe for amalgamation remains uncertain, it is proposed to seek advice from the Disability Services Commission and initiate development of a plan in 2005/06.

*Electoral Act 1907 (s.1752E):* There was no expenditure incurred on advertising, market research polling, direct mail or media advertising activities during the year.

*Equal Opportunity Act 1984 (s.145):* An updated Equal Opportunity Plan was submitted in September 2003 and is effective to 2008. The office has developed strategies for EEO outcomes so no action in this area was required in the reporting period. Other than one short-term secondment, no recruitment was undertaken in the reporting period and the equity and diversity profile of the office remains unchanged. The office currently has only 10 officers, including the CEO. Seven (70%), including the CEO, are women and three (30%) are men. One is part-time and there is a diversity of backgrounds, including one officer from a non-English speaking background.

*Occupational Health Safety and Welfare Act 1984:* No health or safety issues arose for attention and there were no lost time incidents.

*Public Interest Disclosure Act 2003 (s.23(1)(f)):* On the retirement of the nominated PID officer, a new PID officer was appointed. Staff were advised of the new appointment, reminded of the existence of the PID legislation and process, the location of the office's procedure documents and the

procedural options available. No public interest disclosures were made in the reporting period.

*State Records Act 2000* (s.61 and State Records Commission Standards - Standard 2, Principle 6): The office Record Keeping Plan was approved by the State Records Office in November 2003. At the same time, an “Internal Procedures Manual for Records Management” was also created and made available to all staff in hard copy and on the office intranet. Staff were brought up to date on the correct record keeping process at that time, and those processes have not changed. Any new staff (of which there has only been one since 2003) are provided with a copy of this manual. Due to the small size of the office and the relatively small amount of incoming and outgoing correspondence, the record keeping practices of the office are simple, yet effective.

Also in 2003, the office administrative record keeping system was redesigned to adhere to the Keyword AAA record keeping system, and as part of that process the office administrative and functional thesaurus was created. All administrative files were closed on 1 January 2003 and records from that date are now filed as set out in the thesaurus. The office records manager has the responsibility of making sure all records are properly logged and filed. Training for other staff members on this process will be conducted in the first half of 2005/06. The records manager (and select other staff) have attended workshops and seminars centering on records management issues, and further staff instruction on the record keeping practices of the office will be conducted when the Record Keeping Plan is reviewed in 2008, as required by the State Records Office.

### ***Government Policies***

The office endeavours to comply with government policies insofar as they do not interfere with or compromise the independence of the operation of the office from executive government. Those on which action was taken in the reporting period are reported below.

*Waste paper recycling:* The office has always had a practice of recycling waste paper, cardboard, glass, plastics and aluminium. New arrangements to continue that practice since relocation are presently being organised.

*Energy Smart:* As an office of less than 25 FTEs the office is not required to report on energy saving initiatives. However, jointly with the other State public sector agencies with which the office is collocated (the Ombudsman, the Office of Health Review and the Commissioner for Public Sector Standards) the office has implemented the limited energy saving strategies that can practically be implemented given the nature of our operations.