

REPORT ON OPERATIONS

LEGISLATION AND MISSION STATEMENT

The office of Information Commissioner is established by s.55(1) of the the FOI Act and the occupant is directly accountable to Parliament for the performance of the functions prescribed by the FOI Act. The office is independent of executive government and reports directly to the Parliament and not to, or through, a Government Minister. The Acting Information Commissioner is appointed under s.59(1) by the Governor 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, but has no role under the legislation.

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

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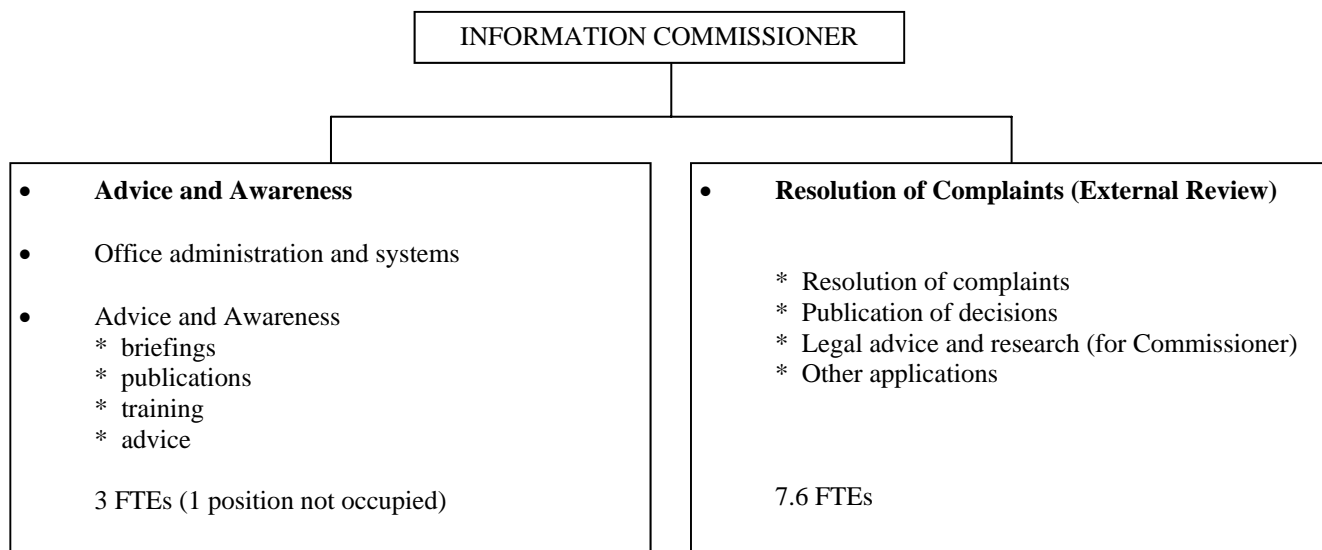
STAFF

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 structure is 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: Rachel Crute, Legal Officer (Research and Investigations); Darryl Wookey, A/Information Commissioner; Vivien Hillyard, Investigations Officer; Tony Pruyn, Senior Investigations Officer; Kim Bracknell, Information Services Manager;
Front row L to R: Michelle Painter, Administrative Assistant; Grace Grandia, Advisory/Projects Officer; Sylvie de Laroche, Personal Assistant; Tim Kennedy, Senior Legal Officer; Anne Marshall, Legal Officer.

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 seeking external review of decisions made by agencies under the FOI Act. The external review team also deals with applications made under ss.13(4) (reduction of time), 13(5) (extension of time), 35(1) (waiver of requirement to consult), 66(4) (lodge a complaint out of time) and 66(6) (lodge a complaint where no internal review) of the FOI Act.

The process under the FOI Act is that a written application must be made to the agency holding - or likely to hold - the documents sought. The agency must deal with the application in accordance with the FOI Act and give the applicant (and in some cases third parties) written notice of its decision - and if access is refused, reasons - within a maximum of 45 days. If the applicant or a defined third party is dissatisfied with the agency's decision, he or she may apply to the agency for internal review of the decision. An officer of the agency who is not subordinate to the original decision-maker must deal with the review application and give the applicant written notice of its decision and reasons, if necessary, within a maximum of 15 days.

Generally it is only after having gone through that process that a complainant or third party who remains dissatisfied with the agency's decision can make a complaint to the Information Commissioner. The role of the Information Commissioner is to conduct a full merits review of the agency's decision. Following that review the Information Commissioner can decide to confirm, vary or set aside the agency's decision and substitute it with the Information Commissioner's decision. The Information Commissioner's decision is binding on the parties, subject only to a right of appeal to the Supreme Court on a question of law.

The emphasis in the external review process, however, 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 speedy, accessible and informal where possible and practicable. 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 accepted professional standards of practice in merit review.

Accordingly, every member of the external review team has been given broad delegated authority by the Information Commissioner, to enable team members to manage and deal with complaints assigned to them, having regard to the nature of each complaint, the issues in dispute between the parties and an initial assessment as to whether there are real prospects that a particular complaint may be resolved through negotiation and conciliation. That delegation empowers external review team members to determine the procedure to be followed in dealing with each complaint, with a view to achieving a conciliated outcome. The procedures followed by members of the team during the negotiation and conciliation process are necessarily flexible. For example, in most complaints, conciliation will be pursued through face to face meetings and discussions, usually with officers of the relevant agency in the first instance and then with the complainant. In other complaints - for example, where one or more of the parties resides at significant distance from the metropolitan area - the procedure adopted will include telephone discussions and correspondence with the parties as well as inviting the parties to provide written submissions, outlining their respective positions on a complaint. Submissions are usually exchanged between the parties, in order to clearly clarify and narrow the issues in dispute between the parties and to give each an opportunity to respond to the other's case.

As was reported in last year’s annual report, the measures by which we assess our performance and record and report on our work were reviewed in that year to more accurately reflect the nature of the matters dealt with. The way in which the applications received by the office are classified and the method by which we calculate some of our performance indicators are explained in more detail in the “Performance Indicators” section of this report.

As noted in last year’s annual report, a number of applications that were in the past included in the figures for “complaints” received and dealt with were more properly classified requests for advice or were misdirected access applications. Those are now separately identified; they are not included in the numbers of complaints received and dealt with and are reported on as part of the Advice and Awareness service.

The fact that the total number of complaints (including the informal/invalid complaints) lodged with my office against decisions of agencies was 135 means that only 1.35% of all access applications and applications for amendment dealt with by agencies under the FOI Act (8799) in the reporting period resulted in complaints being lodged with my office.

In my last annual report, I noted that an unusual feature of the 2004/2005 reporting period was that almost one quarter of the total number of valid complaints made to my office in that reporting period were lodged by seven complainants and that, in most of those cases, the second or third complaints received by my office were in relation to successive access applications made to the same agency by the same complainant. In this reporting period, almost nineteen percent of the valid complaints to my office were lodged by four complainants.

EXTERNAL REVIEW APPLICATIONS AND OTHER APPLICATIONS

A total of 154 applications, composed of 135 external review applications (including 28 informal/invalid complaints) and 19 other kinds of applications under the FOI Act were received in 2005/2006. 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)	135
Section 66(6) applications (No internal review)	7
Section 66(4) applications (Out of time)	5
Sections 66(4) and 66(6) applications	2
Section 35(1): Waiver of requirement to consult	1
Section 13(4): Applications for reduction of time	3
Section 13(5): Applications for extension of time	1
TOTAL	154

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.

The 28 informal/invalid complaints received included, for example, matters in which the complainant endeavoured to lodge his or her complaint with me out of time or without first seeking internal review from the relevant agency, or the complaint was about the manner in which an agency had processed or dealt with the complainant's access application or application for amendment, 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.

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

TABLE 2: COMPLAINTS RECEIVED (BY AGENCY TYPE)

AGENCY TYPE	COMPLAINTS		INVALID		TOTAL	
	No.	%	No.	%	No.	%
State	80		21		101	75
Minister	2		0		2	1.5
Local	25		5		30	22
Other	0		2		2	1.5
TOTAL	107	79	28	21	135	100

Table 3 details the number of complaints received in 2005/06 and the agencies concerned.

TABLE 3: COMPLAINTS RECEIVED

AGENCY	COMPLAINTS	INVALID	TOTAL	AGENCY	COMPLAINTS	INVALID	TOTAL
Minister for Health	1		1	Corrective Services, Department of	5		5
Augusta-Margaret River, Shire of	2	1	3	Cottesloe, Town of	1		1
Bayswater, City of	2		2	Curtin University of Technology	1		1
Belmont, City of	1		1	Edith Cowan University	3	3	6
Bentley Health Service	2	1	3	Education, Department of		1	1
Bunbury, City of		1	1	Education and Training, Department of	8	1	9
Cambridge, Town of	4		4	Environment, Department of	1		1
Canning, Town of	2	1	3	Fremantle Hospital and Health Service	1	1	2
Claremont, Town of		1	1	Graylands Selby-Lemnos and Special Care Health Service	1		1
Community Development, Department for		1	1	Guardianship and Administration Board		1	1
Consumer and Employment Protection, Department of	4	1	5	Health, Department of	1		1

TABLE 3: COMPLAINTS RECEIVED (cont...)

AGENCY	COMPLAINTS	INVALID	TOTAL	AGENCY	COMPLAINTS	INVALID	TOTAL
Heritage Council of Western Australia	1		1	Police Force of Western Australia	11	4	14
Housing and Works, Department of	2	1	3	Premier and Cabinet, Department of the	2		2
Industry and Resources, Department of	5		5	Public Sector Standards Commissioner, Office of the	1		1
Insurance Commission of Western Australia	1		1	Public Transport Authority, Office of the	1		1
Joondalup, City of	1		1	Public Trust Office	1	1	2
Justice, Department of	2	1	3	Rockingham, City of	1		1
Kimberley Health Region	1		1	Royal Perth Hospital	3	2	5
King Edward Memorial and Princess Margaret Hospitals	1		1	Salaries and Allowances Tribunal	1		1
Kwinana, Town of	1		1	Serpentine/Jarrahdale, Shire of	1		1
Land Authority (Landcorp), Western Australian	4		4	South Perth, City of	2		2
Legal Aid Western Australia	1		1	State Administrative Tribunal	1	1	2
Local Government and Regional Development, Department of	1		1	Swan, City of	1		1
Medical Board of Western Australia	1		1	Swan Health Service	1		1
Melville, City of	2		2	University of Western Australia	2	1	3
Minister for Planning and Infrastructure	1		1	Victoria Park, Town of		1	1
Murdoch University	1		1	Vincent, Town of	2		2
North Metropolitan Area Health Service	1		1	Wanneroo, City of	1		1
Perth, City of	1		1	Water Corporation	1		1
Pilbara and Gascoyne Health Region	1		1	Worksafe Western Australia	1		1
Planning and Infrastructure, Department for	4		4	Unknown Agency		2	2
				TOTAL	107	28	135

OTHER APPLICATIONS

Other applications received fell into the following categories:

- by applicants or third parties seeking to lodge complaints out of time, pursuant to section 66(4) of the FOI Act 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 seeking a 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)).

Nineteen such applications were received in 2005/06, six less than the number of such applications received in the previous reporting period.

Table 4 gives a detailed breakdown of these applications and the agencies concerned.

TABLE 4: 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 REQ'MENT TO CONSULT s.35(1)	REDUCTION OF TIME s.13(4)	EXTENSION OF TIME s.13(5)	TOTAL
Bunbury, City of						1	1
Cambridge, Town of	1				1		2
Consumer and Employment Protection, Department of		1					1
Disability Services Commission		1					1
Edith Cowan University					1		1
Health, Department of	1						1
Justice, Department of		2					2
Local Government and Regional Development, Department of			1				1
Minister for Housing and Works; Consumer Protection; Heritage, Land Information	1						1
Planning and Infrastructure, Department for					1		1
Police Force of Western Australia	2	1					3
Premier and Cabinet, Department of the				1			1
University of Western Australia			1				1
Vincent, Town of		1					1
Water Corporation		1					1
TOTAL	5	7	2	1	3	1	19

EXTERNAL REVIEW OUTCOMES

A total of 169 applications, made up of 148 complaints (including informal/invalid complaints) and 21 other applications were finalised during the year. Table 5 gives details of the types of applications dealt with in the 2005/2006 reporting period.

TABLE 5: APPLICATIONS DEALT WITH

TYPE OF APPLICATION	NUMBER
Complaints (including informal/invalid)	148
Section 66(4) Out of time	5
Section 66(6) No internal review	8
Both Section 66(4) and (6)	3
Application for reduction of time	3
Application for extension of time	1
Application for waiver of requirement to consult	1
TOTAL	169

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	61	54.0	22	19.5	30	26.5	113	76.4
Minister	2	100.0	0	0.0	0	0.0	2	1.3
Local	23	74.2	3	9.7	5	16.1	31	21.0
Other	0	0.0	0	0.0	2	100.0	2	1.3
Total	86	58.1	25	18.8	37	25.0	148	100

It can also be seen from Table 6 that only 19.5% of complaints concerning decisions of State Government agencies and 9.7% of complaints concerning decisions of local government agencies required resolution by way of a formal decision. Resolution by conciliation was achieved in 54% of complaints concerning State Government agencies' decisions, 74.2% of complaints concerning local government agencies' decisions and 100% 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 148 complaints (including 28 informal/invalid complaints) were finalised in the 2005/2006 reporting period. Of the 120 formal complaints, as defined in the FOI Act, that were finalised in the 2005/2006 reporting period, 25 proceeded to a published decision. The agency's decision was confirmed on 21 occasions; varied on 2 occasions; and set aside and substituted on 2 occasions.

Eighty six (58.1%) of the valid complaints resolved in the 2005/2006 reporting period were resolved by conciliation without the need for a formal decision. Thirty five complaints (including the twenty informal/invalid complaints) were declined under s.67(1)(a) of the FOI Act (no jurisdiction) and two complaints were declined under s.67(1)(b) of the FOI Act (lacking in substance).

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		
Acacia Prison	1					1
Augusta-Margaret River, Shire of	2				1	3
Bayswater, City of	1					1
Belmont, City of	1					1
Bentley Health Service	2				1	3
Bunbury, City of					1	1
Cambridge, Town of	1					1
Canning, City of	2				1	3
Claremont, Town of		1			1	2
Community Development, Department for					1	1
Consumer and Employment Protection, Department of	3	1			2	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		
Corrective Services, Department of	3					3
Curtin University of Technology	2					2
Deputy Premier; Treasurer; Minister for Energy	1					1
Edith Cowan University	2	1			4	7
Education, Department of					1	1
Education and Training, Department of	5	2			1	8
Environment, Department of	1	1				2
Fremantle Hospital and Health Service					1	1
Graylands Selby-Lemnos and Special Care Health Service	1					1
Guardianship and Administration Board					1	1
Health, Department of	1					1
Housing and Works, Department of	4				2	6
Industrial Relations Commission	1					1
Industry and Resources, Department of	2					2
Insurance Commission of Western Australia	2					2
Joondalup, City of	3	1			1	5
Justice, Department of	2				2	4
Kimberley Development Commission		1				1
Kwinana, Town of	1					1
Land Authority (Landcorp), Western Australian	5					5
Legal Aid Western Australia	1					1
Local Government and Regional Development, Department of	1					1
Melville, City of	1					1
Minister for Health	1					1
Minister for Planning and Infrastructure	1					1
Murdoch University	2					2
North Metropolitan Health Service	1					1
Pilbara and Gascoyne Health Region	1					1
Planning and Infrastructure, Department for	1	1			1	3
Police Force of Western Australia	7	4			6	17
Premier and Cabinet, Department of the	1	2				3
Public Sector Standards Commissioner, Office of the	2					2

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		
Public Trust Office		1			1	2
Rockingham, City of	1		1			2
Royal Perth Hospital	2				2	4
Serpentine-Jarrahdale, Shire of	1					1
South Perth, City of	3					3
State Administrative Tribunal		2			1	3
Stirling, City of	2					2
Swan, City of	1	1				2
Swan Health Service	1					1
University of Western Australia					1	1
Victoria Park, Town of					1	1
Vincent, Town of	2					2
Wanneroo, City of	1					1
Water Corporation	2	2			1	5
Western Power Corporation			1	2		3
Worksafe Western Australia	1					1
Unknown Agency					2	2
TOTAL	86	21	2	2	37	148

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

TABLE 8: PUBLISHED DECISIONS

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0152005	Seven Network (Operations) Ltd	Western Power Corporation	09/08/2005
D0162005	Totino	Police Force of Western Australia	27/09/2005
D0172005	Post Newspapers Pty Ltd	Claremont, Town of	21/10/2005
D0182005	Campbell	Police Force of Western Australia	31/10/2005
D0192005	Mallet	Edith Cowan University	07/11/2005
D0202005*	Lee	Education and Training, Department of	28/11/2005
D0012006	Smithson Planning	Planning and Infrastructure, Department for	19/01/2006
D0022006	McDonald	Joondalup, City of	27/01/2006
D0032006	Mossenson and Others	Kimberley Development Commission	16/02/2006
D0042006	Carson	Swan, City of	17/02/2006
D0052006	Mossenson and Others	Premier and Cabinet, Department of the	20/02/2006

TABLE 8: PUBLISHED DECISIONS (cont...)

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0062006	Byrnes	Environment, Department of and Ross James Sheridan	15/03/2006
D0072006	Conservation Council of Western Australia (Inc)	Western Power Corporation	31/03/2006
D0082006	Edwards	Public Trust Office	04/04/2006
D0092006	Bartucciotto	State Administrative Tribunal	13/04/2006
D0102006	West Australian Newspapers Limited	Western Power Corporation	19/05/2006
D0112006	Campbell	Police Force of Western Australia	09/06/2006
D0122006	Zurich Bay Holdings Pty Ltd	Rockingham, City of and Malavoca Pty Ltd	12/06/2006
D0132006	Barndon	Police Force of Western Australia	16/06/2006
D0142006	Ivanus	Premier and Cabinet, Department of the	21/06/2006
D0152006	Sideris	State Administrative Tribunal	27/06/2006
D0162006	Viatores cum Christo Inc	Consumer and Employment Protection, Department of	29/06/2006
D0172006*	Poprzeczny and Simmonds	Water Corporation	30/06/2006

* Please note that two applications were decided by each of decisions D0202005 and D0172006

OTHER MATTERS

There were 21 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)); and 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.

AGENCY	NO INTERNAL REVIEW s.66(6)			OUT OF TIME s.66(4)		BOTH s.66(4) and 66(6)		REDUCTION OF TIME s.13(4)			EXTENSION OF TIME S.13(5)	WAIVER OF REQUIREMENT TO CONSULT s.35(1)		TOTAL MATTERS FINALISED
	A	R	C	A	R	R	C	R	A	R				
Augusta-Margaret River, Shire of	1													1
Bunbury, City of										1				1
Cambridge, Town of				1				1						2
Consumer and Employment Protection, Department of			1											1
Disability Services Commission	1													1
Edith Cowan University								1						1
Health, Department of				1										1
Justice, Department of			2											2
Local Government and Regional Development, Department of						1								1
Minister for Housing and Works; Consumer Protection; Heritage; Land Information					1									1
Peel Development Commission						1								1
Planning and Infrastructure, Department of									1					1
Police Force of Western Australia	1			1	1									3
Premier and Cabinet, Department of the												1		1
South Perth, City of			1											1
University of Western Australia						1								1
Vincent, Town of	1													1
TOTAL	1	3	4	3	2	3	2	1	1	1	1	1	1	21

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

APPEALS TO THE SUPREME COURT

There were no appeals filed with the Supreme Court of Western Australia during the past year in relation to decisions I made in the reporting period. Last year I reported that there was one outstanding appeal still before the Supreme Court arising from a decision of the former Information Commissioner. It is my understanding that that appeal, from the former Information Commissioner's decision in *Re Thompson and Department of Agriculture* [2002] WAICmr 26, has not yet been heard by the Supreme Court.

SHIRE OF AUGUSTA-MARGARET RIVER – FAILURE TO CONSULT – EVIDENCE OF BREACH OF DUTY UNDER THE FOI ACT.

In August 2005, I received a complaint from a former officer ('the complainant') of the Shire of Augusta-Margaret River ('the agency') about the agency having disclosed a letter of resignation of another officer, which contained personal information about the complainant, without having first consulted the complainant. The agency released the letter, without consultation, on four occasions in response to separate access applications by four different parties. Details of the letter were subsequently published on the front page of the local newspaper.

Both the complainant and the agency were advised that this matter would be included in my annual report. It did not result in a published decision (deciding whether or not the document is exempt would serve no purpose as it has already been publicly released and the information of concern published in the press) and, in my view, it highlights a deficiency in the FOI Act. Further, the agency's response to the matter was highly unsatisfactory, in my view, but there is no further action I can take in respect of it.

I accepted the complaint as a complaint under s.65(1)(a) of the FOI Act against a decision of an agency to give access to a document. In the course of investigating that complaint, it became apparent to me that the document had been disclosed without having consulted the complainant, in breach of the obligation imposed on the agency by s.32 of the FOI Act. Following investigation of the matter, I formed the opinion that there was evidence that a number of officers of the agency, including its Chief Executive Officer, had been guilty of a breach of duty in the administration of the Act by disclosing the letter without consulting the complainant and without affording the complainant her legal rights of review and appeal under the FOI Act. There was evidence before me that at least some of the officers of the agency were aware of the requirement to consult as they had consulted third parties on other occasions and had consulted the complainant about another document containing personal information about her and had edited it before disclosing the document.

Section 63(3) of the FOI Act provides that:

"If in dealing with a complaint the Commissioner forms the opinion that there is evidence that an officer of an agency has been guilty of a breach of duty, or of misconduct, in the administration of this Act, the Commissioner may take such steps as he or she considers appropriate to bring the evidence to the notice of—

- (a) if the person is the principal officer of the agency but is not a Minister — the Minister responsible for the agency; or*
- (aa) if the person is the principal officer of a contractor or subcontractor – the Minister to whom the administration of the Court Security and Custodial Services Act 1999 or the Prisons Act 1981 is committed, as is relevant to the case; or*
- (b) if the person is a Minister — the Parliament; or*
- (c) in any other case — the principal officer of the agency."*

The agency engaged solicitors to represent it in the proceedings before me in relation to this complaint. Following investigation of the complaint – and clarification that the solicitors engaged were instructed to represent not only the agency but also the Chief Executive Officer and each of the other individual officers concerned – I advised the solicitors in writing that I had formed the opinion that there was evidence that the Chief Executive Officer and three other officers of the agency had been guilty of a breach of duty in the administration of the FOI Act and I set out the basis of that opinion in respect of each of those officers. I also advised the solicitors that I had formed the opinion that there was no evidence that a fourth officer of the agency had been guilty of a breach of duty.

I recommended that the Chief Executive Officer write to the complainant to apologise personally, and on behalf of the agency, for what had happened and that the Chief Executive Officer put in place procedures to ensure that what happened does not occur again. I also advised that I proposed to draw the matter to the attention of the Shire President of the agency and to report it in my Annual Report. I also indicated that it would be desirable for the agency if, when I were to do so, I were also able to advise the Shire President and the Parliament of Western Australia what steps had been taken by the agency's Chief Executive Officer to rectify the situation.

In respect of the other officers involved, I explained that the course of action I would normally follow in such a case would be to bring the evidence to the notice of the Chief Executive Officer, who is the agency's principal officer for the purposes of the FOI Act. However, having noted the personal involvement of the Chief Executive Officer of the agency in the decision-making processes, which led to at least three of the disclosures of the document, I advised that I did not propose to take any further action in respect of the evidence of breaches of duty by those officers. I suggested, however, that if any of them were to be involved in dealing with any FOI application in the future, they participate in the training courses run by my office and contact my Advice and Awareness officers if in doubt about any aspect of the FOI process.

The solicitors subsequently advised me that a letter of apology had been sent to the complainant and that the Chief Executive Officer had “... *agreed to put in place procedures to ensure that what happened does not occur again, including the implementation of [my] suggestions relating to the participation of relevant Shire employees in the training courses run by [my] office, and the ongoing contact with [my] Advice and Awareness officers by any Shire employee who is in doubt about any aspect of the FOI process.*”

The solicitors provided me with a copy of the letter of apology to the complainant. It was not a letter from the Chief Executive Officer personally; rather it was a letter from the solicitors.

This particular complaint highlighted the difficulty where the officer concerned is the principal officer of a local government agency. In the case of a local government agency, there is not a Minister who can be said to be “the Minister responsible for the agency” and none of the other paragraphs of s.63(3) applies. It appeared to me, therefore, that the only appropriate action I could take in those circumstances was to draw the matter to the attention of the Shire President and include an account of the matter in my annual report to the Parliament, in accordance with my responsibility to ensure that agencies and members of the public are aware of their responsibilities and rights respectively under the FOI Act.

Following is the text of my letter to the Shire President, edited to avoid further disclosure of personal information about the complainant and some other individuals:

“I write to inform you that I have been dealing with a complaint made by [the complainant, a former officer of] the Shire of Augusta-Margaret River (‘the agency’), in relation to possible breaches of duty under the Freedom of Information Act 1992 (‘the FOI Act’) by officers of the agency.”

[The complainant's] complaint concerned the disclosure, under the FOI Act, of a resignation letter, tendered on 8 December 2004, from [another former officer of] the agency ('the Letter'). Extracts from the Letter, which identified [the complainant], were afterwards published in the [local newspaper].

Under section 63(2), my functions include ensuring that agencies are aware of their responsibilities under the FOI Act and providing assistance to members of the public and agencies on matters relevant to the FOI Act. I am also required to take certain steps if I form the opinion that there is evidence that an officer has been guilty of a breach of duty or misconduct in the administration of the FOI Act.

Further to my inquiries with the agency concerning this matter, the agency's solicitors advised me that...the agency's Chief Executive Officer, and other officers and former officers of the agency, acknowledge that the Letter was disclosed in response to a number of FOI applications in breach of section 32 of the FOI Act. Those officers submitted that those breaches were inadvertent and expressed regret at the effect of this disclosure on [the complainant's] rights of review and appeal.

Statutory obligation to consult

Section 32(2) of the FOI Act provides that, among other things, an agency to which an access application has been made "...is not to give access to a document [containing personal information about an individual other than the applicant] unless the agency has taken such steps as are reasonably practicable to obtain the views of ...the third party... as to whether the document contains exempt matter under clause 3 of Schedule 1." Clause 3 exempts from disclosure under the FOI Act personal information about an individual, subject to certain limits on that exemption.

The term "personal information" is defined in the Glossary to the FOI Act to mean:

"...information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -

- (a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
- (b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample".*

The Letter clearly contains personal information, as defined, about [the complainant]. Although [the complainant] is not named in the letter, she is referred to by her position title and her identity is reasonably ascertainable from that information. The agency was, therefore, obliged by section 32 to consult her and obtain her views before making a decision to disclose the Letter.

It is not in dispute that [the complainant] was not consulted by the agency to obtain her views as to whether or not the Letter contained exempt personal information about her before the Letter was disclosed in response to several access applications under the FOI Act. I understand from [the complainant] that, had she been consulted by the agency as required, the view she would have given was that the document contains information that is exempt under clause 3.

In those circumstances, if the agency had decided nonetheless to disclose the document, it would have been required by section 34 of the FOI Act to, firstly, give the complainant written notice of

the decision and, secondly, defer giving the applicants access to the document until the complainant had had the opportunity to exercise her legal rights of internal review and, if necessary, external review.

None of that occurred and the complainant was thereby denied her legal rights in respect of the proposed disclosure of personal information about her.

The purpose of the FOI Act is to further the accountability of agencies and not to unnecessarily intrude upon the privacy of individuals in the process. In my view, the requirement to consult individuals before releasing information about them - whether that information is ultimately found to be exempt or not - is a fundamental protection of individual privacy and a failure to consult those persons denies them their legal rights of review and appeal, as was the case here. I view such a breach as particularly serious.

Evidence of breach of duty

In view of that and the agency's statements, I have formed the opinion that there is evidence that the Chief Executive Officer of the agency....has been guilty of a breach of duty in the administration of the FOI Act:

(1) *under section 32 of the FOI Act because:*

in response to an access application under the FOI Act from [a councillor], he knowingly allowed the disclosure to [the councillor] of an unedited copy of the Letter containing personal information about [the complainant] without first having consulted her or caused her to be consulted; and

in response to access applications by [two media outlets and a legal firm], he authorised the release of an unedited copy of the Letter to each of those parties without having first consulted [the complainant] or caused her to be consulted; and

(2) *under section 34 of the FOI Act, by not giving [the complainant] written notice of any of the decisions to disclose the Letter - or not ensuring that another officer gave such notice - and deferring access until [the complainant] had the opportunity to exercise her legal rights of review.*

I also formed the opinion that there is evidence that other officers and former officers of the agency had been guilty of similar breaches of duty in the administration of the FOI Act.

The course of action I would normally follow in respect of those other officers would be to bring the evidence to the notice of the Chief Executive Officer, who is the agency's principal officer for the purposes of the FOI Act. However, having noted the personal involvement of the Chief Executive Officer of the agency in the decision-making processes which led to the disclosures of the Letter I do not propose to take any further action in respect of the evidence of breaches of duty by the other officers or former officers of the agency.

Nevertheless, I have written to those individuals and informed them of my opinion and suggested that should they be involved in dealing with any FOI application in the future, they should participate in the training courses run by my office and contact my Advice and Awareness officers if in doubt about any aspect of the FOI process.

My recommendations

In view of the regrets expressed by [the Chief Executive Officer] and his officers, I recommended that he write to [the complainant] to apologise personally, and on behalf of the agency, for what happened. I also recommended that [the Chief Executive Officer] put in place procedures to ensure that what happened does not occur again. I advised [the Chief Executive Officer] that I proposed to draw this matter to your attention and to report it in my Annual Report. In my letter to [the Chief Executive Officer] I also advised that I considered it would be desirable for me to be able to advise what steps had been taken by him, as Chief Executive Officer of the agency, to rectify the situation.

Action taken by the agency

Since then [the Chief Executive Officer] has not written to [the complainant] apologizing personally on behalf of the agency and the other officers. Instead, the agency's solicitors have forwarded a letter to [the complainant], which I enclose for your information. I note that that letter has not, as yet, been received by [the complainant], since it was sent to her old address. I have asked the agency's solicitors to resend it to her new address.

In that letter the agency's solicitors say that I do not question that the disclosure of the Letter was inadvertent and that I left open the possibility that, even if [the complainant] had been consulted, it would have been appropriate, in the circumstances, for unedited access to the Letter to be given, for example, under the Local Government Act rather than the FOI Act.

I would like to clarify that I made no findings in relation to the claims that the disclosure of the Letter was inadvertent. I also take issue with the statement that my findings:

“... leave open the possibility that, even if [the complainant] had been consulted, it would have been appropriate, in the circumstances, for unedited access to the....Letter to be given - for example, under the Local Government Act rather than the FOI Act.”

In my view, that statement, in context, indicates that I considered that unedited access would have been appropriate in other circumstances. That is not the case, since that was not a matter for my consideration. Moreover, I consider it to be out of place in the context of a letter of apology for an acknowledged breach of the FOI Act.

Finally, the agency's solicitors advised that [the Chief Executive Officer] has agreed to put in place procedures to ensure that what happened does not occur again but failed to mention, either to [the complainant] or to me, what those procedures are, other than to state that they include the implementation of suggestions made by me.

In view of the above, the letter sent by the agency's solicitors on behalf of the agency to [the complainant] for an acknowledged breach and the resultant denial of [the complainant's] legal rights appears to me to be an exercise in self-justification rather than a sincere expression of apology for an acknowledged and clear breach and the resultant denial of [the complainant's] legal rights.

For those reasons, I do not consider the agency's response to this matter to be adequate or appropriate in the circumstances. However, I do not consider that there is any further action I can take in respect of it other than, as I have said, to draw it to your attention and include it in my annual report to the Parliament. I would, of course, welcome any response you may care to provide.”

REPORT ON OPERATIONS continued

The Shire President subsequently responded by thanking me for the letter, advising that he had “*read with care the information and findings ...*” in my letter and thanking me for bringing the matter to his attention. No further response to this matter has been received from the agency. The complainant was subsequently advised that there was no further action I could take in respect of the matter, other than to include it in my Annual Report to the Parliament.

Those actions cannot, of course, undo any damage that may have been done by disclosure of the document without consultation and it is disappointing – and does the agency no credit – that the complainant has not, at the least, received a proper personal apology for what happened. I understand that no officers of the agency have since participated in or sought to participate in training courses run by my office and neither the Chief Executive Officer nor the Shire President has advised me any further of what, if any, steps have been taken by the agency to avoid such an occurrence in the future.

This complaint highlighted the deficiency, in my view, of s.63(3) where the Information Commissioner forms the opinion that there is evidence that there has been a breach of duty in the administration of the FOI Act by the principal officer of a local government agency. None of the actions described in s.63(3) provides for that situation. This deficiency is a matter that has been raised by the former Commissioner in the past, recommending amendment of the FOI Act in order to deal with situations such as these. However, successive governments have taken no action in respect of that and other recommendations for amendment of the legislation proposed by the former Commissioner.

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.

All members of my staff undertake the following functions for which the Advice and Awareness team is primarily responsible:

- 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 workshops, 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.

A number of formal briefings, presentations and training sessions were conducted throughout the year under review. General briefings are tailored in each case to meet the needs of applicants or agencies. Briefings, presentations and training sessions given by staff of the office are shown in Table 10.

TABLE 10: FORMAL TRAINING AND PRESENTATIONS

DATE	PRESENTATION STYLE	AUDIENCE
2 August 2005	Presentation by A/Inform. Comm.	<i>Curtin Leadership Program</i>
11 August 2005	FOI Briefing	<i>Officers from KEMH & PMH</i>
24 August 2005	FOI Briefing (1)	<i>City of Nedlands</i>
31 August 2005	FOI Briefing (2)	<i>City of Nedlands</i>
31 August 2005	Informal briefing by A/Info. Comm.	<i>Public Administration Committee of the Legislative Council of the Parliament</i>
7 September 2005	FOI Briefing	<i>WA Treasury Corporation</i>
14 September 2005	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
6 October 2005	Presentation by A/Info. Comm.	<i>Nedlands Rotary Club</i>
12 October 2005	Decision makers Forum (with A/Info. Comm.)	<i>Officers from State and local government agencies</i>
9 November 2005	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
6 December 2005	FOI Briefing	<i>Department of Consumer & Employment Protection</i>
15 February 2006	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
1 March 2006	FOI Coordinators Workshop	<i>City of Armadale</i>
8 March 2006	Decision-makers Forum (with A/Info.Comm.)	<i>Officers from State and local government agencies</i>
21 March 2006	FOI Briefing	<i>FOI Coordinators Group held at CALM</i>
30 March 2006	Decision-makers Forum	<i>City of Armadale</i>
12 April 2006	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
10 May 2006	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>
24 May 2006	FOI Briefing	<i>City of Wanneroo</i>
7 June 2006	FOI Coordinators Workshop	<i>Officers from State and local government agencies</i>

FOI Coordinator Workshops

Workshops are scheduled based on the level of demand and are conducted by the office, at no charge to the agencies. Seven 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; application fee 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 the majority of the FOI Coordinators Workshops in 2005/06 at our own premises. Feedback from participants who attended the workshops was consistently very positive.

In this financial year seven 'FOI Coordinators Workshops' were conducted. Officers from the following agencies attended (number in attendance is shown in brackets):

AIMS Corporation (2)	Minister for Local Government and Regional Development; Fisheries; The Kimberley, Pilbara and Gascoyne, Office of the (5)
Bentley Health Service (1)	Minister for Planning & Infrastructure, Office of the (2)
Central TAFE (1)	Murdoch University (1)
City of Armadale (11)	Office of Energy (1)
City of Gosnells (2)	Office of Health Review (1)
City of Melville (1)	Osborne Park Hospital (1)
City of Nedlands (1)	Perth Market Authority (1)
City of Perth (1)	Planning & Infrastructure, Department for (1)
City of Wanneroo (2)	Public Sector Standards Commissioner, Office of the (1)
Community Development, Department for (1)	Public Trust Office (1)
Conservation & Land Management, Department of (1)	Racing, Gaming & Liquor, Department of (2)
Consumer & Employment Protection, Department of (7)	Racing & Wagering WA (1)
Culture & the Arts, Department of (1)	Shire of Bridgetown-Greenbushes (1)
Disability Services Commission (1)	Shire of Bruce Rock (1)
Education & Training, Department of (1)	Shire of Manjimup (1)
Electoral Commission (1)	Shire of Murray (1)
Energy Safety (1)	Shire of Plantagenet (2)
Environment, Department of (3)	Shire of Serpentine-Jarrahdale (1)
Government Employees Superannuation Board (1)	State Administrative Tribunal (1)
Health, Department of (Princess Margaret) (1)	Swan Health Service (1)
Heritage Council (1)	Swan & Inner City Elderly Mental Health Service (1)
Horizon Power (2)	Synergy (2)
Housing & Works, Department of (6)	Town of Cambridge (1)
Industry & Resources, Department of (1)	Town of Cottesloe (1)
Insurance Commission of WA (1)	Town of Kwinana (1)
Justice, Department of (1)	Town of Vincent (2)
Land Information, Department of (1)	University of Western Australia (3)
Local Government & Regional Development, Department of (3)	Verve Energy (1)
Minister for Education, Office of the (1)	Western Power Corporation (1)

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 to 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 the 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 2005/06, attended by a total of 22 officers of State Government agencies and 15 officers of local government agencies.

Armadale , City of (13)	Land Information, Department of (1)
Consumer & Employment Protection, Department of (9)	Mandurah, City of (1)
Edith Cowan University (2)	Stirling, City of (1)
Education & Training, Department of (1)	University of Western Australia (2)
Environment, Department of (1)	WA Treasury Corporation (3)
Fisheries, Department of (1)	West Coast TAFE (1)
Forest Products Commission (1)	

WEB SITE AND ELECTRONIC COMMUNICATIONS

The office web site (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 the FOI process and 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 1 July 2005, the office began including on the web site 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.

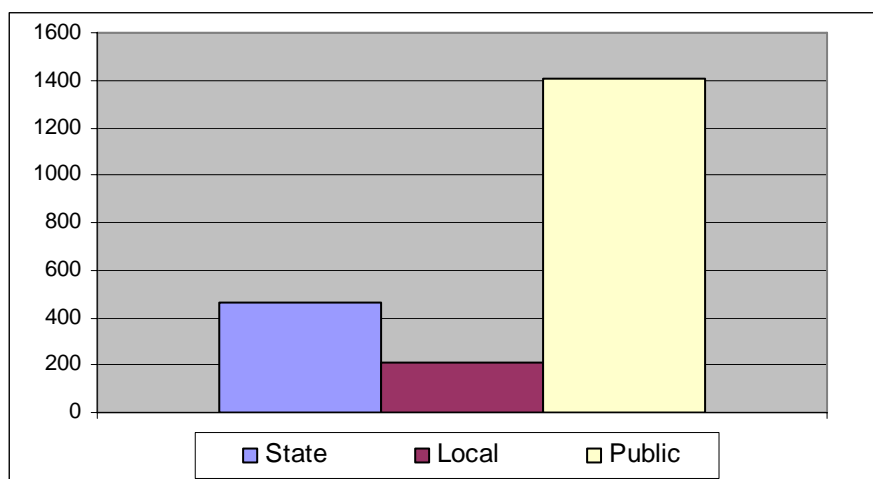
We have received positive feedback about our web site, particularly for its user-friendly links and the amount of information readily available. There has been a steadily increasing number of user sessions, which illustrates a high level of interest in FOI generally; in the process to follow in making 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.

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 2,082 telephone calls received during the year (1,899 in 2004/05). Over 67% of telephone calls received (78% in 2004/05) 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 FOI Act.

FIGURE 5: TOTAL TELEPHONE CALLS



State 464; Local 208; Public 1410

WRITTEN ENQUIRIES

Written requests for advice and misdirected access applications 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. These matters are separately identified and reported on as part of the *Advice and Awareness* output.

There were 283 written enquiries for advice and assistance received and dealt with during the year. The written enquiries were received by letter and by email.

Sixty were received from officers of agencies and 223 from members of the public. Of those, 62 were misdirected access applications which should have been sent to the agency holding the documents sought and 221 were requests for advice. Of the 221 requests for advice, 85 were of a routine nature and

136 were of a more complex nature. However, all of these resulted in advice being given to the correspondent as to the proper procedures to be followed or other matters relating to the administration of the FOI Act. 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.

As in past years, the agencies the subject of the greatest number of misdirected applications were the Police Force of Western Australia (23) and the Department of Corrective Services (22).

Notwithstanding previous attempts to address this issue by this office and the staff of the FOI Units of each of those agencies, there appears to remain a significant problem with prisoners incorrectly directing their inquiries and with staff at certain police stations incorrectly referring applicants to my office.

I will continue to monitor the frequency and type of matters that are misdirected to my office and, where appropriate, contact relevant agencies to assist those agencies in attempts to minimise such matters.

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
Bunbury Regional Hospital	1	Environment and Conservation, Department of (inc former Environment, Department of)	1	Premier and Cabinet, Department of the	1
Community Development, Department for	1	Kalamunda, Shire of	1	Royal Perth Hospital	1
Corrective Services, Department of (inc. former Department of	22	Planning and Infrastructure, Department for	4	Unknown Agency	6
Education and Training, Department of	1	Police Force of Western Australia	23	TOTAL	62

INFORMATION STATEMENT SURVEY

Sections 94 and 96 of the FOI Act require all agencies (other than Ministers and exempt agencies) to cause an up-to-date information statement about the agency to be published at intervals of not more than 12 months. Information statements are required to contain:

- a statement of the structure and functions of the agency;
- a description of the ways in which the functions (including, in particular, the decision-making functions) of the agency affect members of the public;
- a description of any arrangements that exist to enable members of the public to participate in the formulation of the agency's policy and the performance of the agency's functions;
- a description of the kinds of documents that are usually held by the agency including: which kinds of documents can be inspected at the agency under a written law other than the FOI Act (whether or not inspection is subject to a fee or charge); which kinds of documents can be purchased; and which kinds of documents can be obtained free of charge;
- a description of the agency's arrangements for giving members of the public access to the documents mentioned above, including details of library facilities of the agency that are available for use by members of the public;
- a description of the agency's procedures for giving members of the public access to the documents of the agency under Part 2 of the FOI Act including: the designation of the officer or officers to whom initial inquiries as to access to documents can be made; and the address or addresses at which access applications can be lodged; and
- a description of the agency's procedures for amending personal information in the documents of the agency under Part 3 of the FOI Act including: the designation of the officer or officers to whom initial inquiries as to amendment of personal information can be made; and the address or addresses at which applications for amendment of personal information can be lodged.

The FOI Act requires that a copy of the agency's information statement be provided to the Information Commissioner as soon as is practicable after the statement is published.

This is an important feature of the FOI Act, designed to contribute to openness and transparency of government agencies and to further the FOI Act's objects of greater government accountability and enabling greater public participation in government.

For a number of years, however, this office has not followed up with agencies that were not providing this office with a copy of an up-to-date information statement every 12 months. It was decided, therefore, in this reporting period to commence a project to ensure that agencies are complying with this requirement.

The first stage of the project was to survey agencies in respect of the current status of their information statements, as a precursor to following up with agencies that have not regularly published an up-to-date information statement, or have published an information statement that does not comply with the FOI Act, to ensure that agencies are aware of, and complying with, their responsibilities in this regard.

For this purpose, a questionnaire was sent to agencies asking the following questions:

1. *Are the details contained in your Information Statement current?*
2. *When was the Information Statement last reviewed and updated?*
3. *When was your Information Statement last republished?*
4. *Is the Information Statement published in your agency's annual report or as a "stand alone" document?*
5. *In what form is the Information Statement published?*
6. *If available in electronic form, web address of the document?*
7. *If only available in hardcopy form, and a copy has not been provided within the last 12 months, when can a current copy be expected to be delivered to my office?*

The questionnaire was sent to 135 State Government agencies and 118 local government agencies. By the due date for return of the survey responses had been received from 89 State Government agencies (65.93%) and 74 local government agencies (62.71%).

Of those, only 53.93% of State Government agencies and 63.51% of local government agencies responding to the survey advised that they had updated their information statements within the last 12 months. Only 51.69% of State Government agencies and 60.81% of local government agencies advised that they had published up-to-date information statements in the last 12 months.

Since the due date for return of the survey, many agencies have responded having been sent reminders to do so. However, despite several reminders, the following agencies have not yet responded to the survey:

Ashburton, Shire of	Nungarin, Shire of
Boyup Brook, Shire of	Ravensthorpe, Shire of
Coorooow, Shire of	Trayning, Shire of
Kellerberrin, Shire of	West Arthur, Shire of
Koorda, Shire of	Westonia, Shire of
Kulin, Shire of	Wongan-Ballidu, Shire of
Meekatharra, Shire of	Architects Board of WA
Merredin, Shire of	Potato Marketing Corporation of WA
Mount Marshall, Shire of	Public Trust Office
Mukinbudin, Shire of	The National Trust of Australia (WA)
Murchinson, Shire of	Water and Rivers Commission

The next stage of the project is, firstly, to follow up individually with those agencies that have not responded to the survey and, secondly, to follow up individually with those agencies that have not published up-to-date information statements within the last 12 months.

As part of this project, my office is also in the process of analysing the published information statements of agencies. One issue that has already become apparent from preliminary analysis of the information statements available is that a number of agencies are imposing fees and charges they are not entitled to impose under the FOI Act. The applicable fees and charges are prescribed in the *Freedom of Information Regulations 1993* and it is not lawful for an agency to impose any fee or charge other than those prescribed by the regulations. Some agencies are adding GST to the fees and charges imposed. The fees and charges under the FOI Act are exempt from GST and it must not be charged to applicants under the FOI Act.

This issue will be taken up with the individual agencies concerned as each information statement is analysed. It is also proposed to publish a guideline for agencies in respect of fees and charges, reinforcing that they may only impose those fees and charges authorised by the FOI Act.

It is proposed to include in next year's annual report the results of the analysis of the information statements and it is to be hoped that it will be possible then to report that all agencies have published up-to-date, compliant information statements within the next reporting period.

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, and include:

- complaint resolution;
- giving advice about the FOI Act and procedures;
- the publication of formal decisions on complaints;
- the distribution of awareness raising and educational material;
- talks and information sessions for community groups;
- a free-call telephone line for country callers;
- a web site at <http://www.foi.wa.gov.au>;
- a telephone advisory service;
- FOI training sessions;
- specifically tailored meetings or advisory sessions for agencies; and
- providing an 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

In August 2005, Ms Rachel Crute, Legal Officer (Research and Investigations), returned to the office after a lengthy secondment to the State Ombudsman's office.

Ms Jo Merrick, who was seconded to act in Ms Crute's position for 6 months, returned to the State Ombudsman's Office.

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 the Attorney General 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 the Attorney General is acknowledged and appreciated.

COMPLIANCE WITH OTHER ACTS

Compliance with legislative and associated reporting requirements which apply to the office and which is 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 with the Ombudsman, Commissioner for Public Sector Standards, Office of Health Review and Commonwealth Ombudsman, which required moving premises and, secondly, the proposed amalgamation of the offices of Information Commissioner and Ombudsman. Although collocation has been effected the development of a Disability Services Plan has not been progressed pending a firm timeframe for the proposed amalgamation.

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. 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: No public interest disclosures were made in the reporting period

Public Sector Management Act 1994: The office is not subject to the provisions of this legislation but endeavours to comply with it in respect of human resource management practices.

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 and appropriate to the business needs of the office.

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. 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 have been 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.

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