Freedom Of Information

INFORMATION COMMISSIONER
WESTERN AUSTRALIA
ANNUAL REPORT TO THE
PARLIAMENT 2006/07

OFFICE OF THE INFORMATION COMMISSIONER

Western Australia

DEAR MR PRESIDENT
DEAR MR SPEAKER

In accordance with the provisions of the *Financial Administration and Audit Act 1985* and the *Freedom of Information Act 1992*, I submit my report for the year ended 30 June 2007 which has been prepared in compliance with the provisions and reporting requirements of both Acts.

D A WOOKEY
A/INFORMATION COMMISSIONER
28 September 2007

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FOREWORD

FOREWORD

Darryl Wookey

This is the fourteenth annual report of the Information Commissioner to the Parliament and my fourth and final annual report to Parliament as Acting Information Commissioner.

On 3 November 2003, on the recommendation of the then State Solicitor, Mr Peter Panegyres, I was appointed Acting Information Commissioner, on leave of absence from the State Ombudsman, for a period of up to 12 months until proposed legislation was enacted which would, among other things, create the new position of Privacy and Information Commissioner. On 1 November 2004, I was appointed for a further 12 month term, as I was again on 1 November 2005 and 1 November 2006, as no legislation had been forthcoming.

Finally, on 14 September 2006, I received Draft 6 of the *Information Privacy Bill 2006* and was invited to comment on it by 10 October 2006. That Bill, if enacted, would among other things establish a regime for the collection, use, exchange and disclosure of health information and other personal information by certain persons and bodies; provide for access to, and amendment of, private sector health records; establish the office of Privacy and Information Commissioner; and provide for (but not require) the concurrent appointment of the same person as Ombudsman and Privacy and Information Commissioner. On 4 October 2006, when I was in the process of finalizing my comments on the draft legislation, I received a copy of Draft 5 of the *Freedom of Information Amendment Bill 2006,* on which I was invited to comment by 13 October 2006. Among a range of proposed amendments to the FOI Act, that Bill stripped the Information Commissioner of all investigating powers and the Commissioner's decision-making power under the FOI Act, transferring the latter to the State Administrative Tribunal (the SAT) but leaving the Commissioner with a conciliation role.

As the provisions of the two Bills were so closely interrelated and interwoven, I provided my comments in respect of both on 13 October 2006. I provided detailed comments on the particular provisions to the instructing officer and comments on higher-level matters of policy to the Attorney General, Hon Jim McGinty MLA. Although I was generally supportive of the new legislation and many of the proposed changes to the FOI legislation, I had a number of concerns. As well as specific matters raised with the instructing officer, they included the exclusion of Ministers from the privacy legislation, significant deficiencies in terms of the proposed Commissioner's investigative powers, the procedures following the completion of conciliation proceedings and the lack of power for the Commissioner following audit examination or review procedures under the privacy legislation and the proposed changes to the role and powers of the Commissioner under the FOI Act, particularly the removal of the Commissioner's investigating powers and the transfer of the decision-making power to the SAT, effectively adding another layer of review, expense and delay to the external review process. I suggested several possible alternatives that would improve and simplify, rather than complicate, the process. The strongest of those was that previously recommended by the Taskforce that recommended the establishment and jurisdiction of the SAT - that the functions of the Information Commissioner remain unchanged but that the appeal on questions of law from the Commissioner's decisions be to the SAT rather than the Supreme Court as is presently the case.

Following that letter, the Attorney General and others met with me at Parliament House to discuss the concerns I had raised. Agreements reached at that meeting, including the restoration of the Commissioner's investigative powers, allayed a number of my concerns but two issues remained outstanding for further consideration following the meeting. The first of those was whether Ministers should be exempt from the operation of the privacy legislation and the second of those was the question of whether or not the Commissioner should retain the decision-making power currently exercised by the Information Commissioner under the FOI Act and/or should also have decision-making power under the privacy legislation. My letter confirming the outcome of that meeting is reproduced at pages 6-10 of this report. I received no response to that letter and no further communication from the Attorney General in respect of any of those matters or at all. The two Bills were introduced into Parliament on 28 March 2007 with those provisions unchanged.

There having been no further discussion with me about those matters, my view in respect of them remained unchanged. In the media coverage that followed, rather than addressing my substantive comments and concerns, the Attorney General chose to attack me personally. A copy of my letter of 30 March 2007 to the Attorney General concerning that is reproduced at pages 11-13 of this report. That letter, too, elicited no response.

Instead, on 3 April 2007, the Attorney General, in the course of debate on the *Medical Practitioners Bill 2006* (at Hansard 1067b-1094a/1), purported to draw a comparison between the timeliness of the SAT and the timeliness of my office in finalizing matters. The Attorney General there stated that the SAT has *"a general rule that all matters are to be determined within three months"* whereas *"a significant number of cases"* had taken more than 12 months for my office to finalize. It was not a valid comparison. In fact, a perusal of the SAT's website indicates that the three month target determination time appears to be the time between a hearing and a final determination, not the total time to deal with a matter. The information used by the Attorney General concerning complaints dealt with by me was the total time taken - from the date the complaint was lodged to the date of decision - and not merely the determination time. It is not correct to suggest that the SAT generally finalizes all matters within 3 months of receipt, that a significant number of complaints to this office took more than 12 months to finalise or that this office takes significantly longer to deal with matters than does the SAT.

Analysis of the last 50 published decisions of the SAT (leaving aside those which were decided on the papers or for which a hearing date is not ascertainable from the published decision) indicates that the average time between the matter being heard - not the matter being received - and the decision being delivered was approximately 2.94 months. Perusal of the SAT annual report for 2005/2006 reveals that in its Human Rights stream, while 90% of guardianship and administration matters were dealt with within three months, only 60% of mental health applications and 30% of equal opportunity applications were dealt with within three months (page 50). In its Vocational Regulation stream, only 50% of matters were dealt with within three months (page 58). In its Commercial and Civil stream the percentage of matters finalized within 3 months was 30% for firearms matters, 40% for commercial tenancy, building disputes and strata titles matters, 60% for subdivision matters, 70% in road traffic matters and 80% in consumer credit matters, and it set as its target for 2006/2007 to have, among other things, 50% of applications resolved within 16 weeks (page 19). In its Development and Resources stream no more than 30% of any kind of matter was finalized within 3 months and it set as its target for 2006/2007 to have 30% of matters dealt with within 3 months (page 35). All the SAT's operational streams reported having taken more than 12 months to finalize a number (unspecified) of matters (see the tables on pp19, 35, 50 and 58 of the SAT Annual Report 2006). In my office in 2005/06, only 13% of external review matters finalized took more than 12 months total time from the date of lodgement. That reduced to approximately 10% in 2006/07. In 2005/06 72% of complaints to my office were

finalized within 6 months of receipt, 55% within 3 months and 35% within a month. In 2006/07 61% were resolved within three months and 77% within 6 months.

Perusal of the 2005/2006 annual report of the SAT also indicates that the average time for resolution of matters across all streams was 93 days. As I advised the Attorney General's Chief of Staff, Mr Danny Cloghan (in an email dated 3 April 2007 (at 9.04am) correcting the wrong figure given in my letter of 30 March reproduced herein), the average time taken by my office to deal with complaints at that time was 117.8 days. It is not the case, as suggested by the Attorney General, that there is a significant difference in the time taken by each body to finalise matters and, in any event, timeliness was not an issue at the time the Attorney General first announced his intention to transfer the Commissioner's jurisdiction to the SAT.

Further, not only is it the case that the SAT does not resolve matters significantly more quickly than my office, it is also the case that a greater percentage of matters are resolved by conciliation by my office than are resolved by informal means by the SAT. In 2005/2006, the Commercial and Civil stream of the SAT reported that, of the 2110 matters finalized, 160 (approximately 7.5%) were resolved by mediation. The Development and Resources stream reported that approximately 60% of its matters were resolved without the need for final hearing (p. 32). The Human Rights stream reported that approximately 50% of matters dealt with by that stream were resolved at, or shortly after, mediation (page 48). While the Vocational stream reported that *"…mediation … has been very successful …"* (p. 57), there is no report as to the number or percentage of matters that were resolved by that method. The Office of the Information Commissioner achieved a conciliation rate of 72% of all complaints finalized in 2006 and 74% in 2007.

Also in April 2007, once again without giving any proper reasons, without full disclosure of the material on which its decision was based and - despite undertakings being given that it would - without giving me the opportunity of making informed submissions in respect of the matter, and after a year's correspondence concerning its process, the Salaries and Allowances Tribunal confirmed its decision of last year to downgrade the classification of the office. The Tribunal still refuses to make public the report on which that decision was based. I subsequently provided copies of all of that correspondence to the Public Administration Committee, a standing committee of the Legislative Council of the Parliament, which I understood to have a role in monitoring issues concerning the government accountability agencies. My letter to the Committee has not received a response.

On Monday 24 September 2007, while I was in the process of finalizing this report, I was advised by Mr Cloghan that, on the expiry of my current term as Acting Information Commissioner on 31 October 2007, the Attorney General will arrange for the Governor to appoint a public servant from the Department of the Premier and Cabinet to the position. No reason was given for the change other than that the Attorney General wants someone else to "transition" the organization. It is an unsurprising end to a term in which I have had an increasing sense of the undermining of the role of the office as an independent accountability agency. The events of this year in respect of the office bring into sharp focus the issues raised in the *"Accountability and Independence Principles"* report tabled by the accountability officers in November 2006 which detailed the *"…mechanisms that can enhance independence and reduce* [the accountability officers'] *vulnerability to control or influence of the Executive Government."* The full report can be accessed on the website of the Commissioner for Public Sector Standards at www.opssc.wa.gov.au. I strongly urge the Parliament to take those principles into account when considering any proposed legislation creating new accountability offices or making changes to existing ones and in considering how secure the independence of the existing offices is in reality.

Although the office has been effectively in limbo for the past 4 years, it has nonetheless been a productive time. In 2004 the office moved to collocated premises with the Ombudsman, the Commonwealth Ombudsman, the Office of Health Review and the Commissioner for Public Sector Standards, with the resultant convenience of access to complaints mechanisms by members of the public, savings to the public purse and operational efficiencies. We also reviewed and revised our performance indicators and the manner in which we reported under them in order to provide a clearer picture of the nature and number of matters dealt with by the office and their resolution. We restructured the office in preparation for the announced proposed "amalgamation" with the Ombudsman. We were consulted by jurisdictions around the world, our Information Commissioner model having been recognized as a model of best practice and the preferred model of external review.

In my time in the role, there has been a significant increase in the proportion of complaints resolved by conciliation – my preferred method of resolution – from 61.5% to 74%. That dramatic improvement has resulted in complaints taking slightly longer to deal with but, following initiatives introduced in the past 12 months, the time taken to deal with matters is steadily decreasing. The number of applications for external review received continues to decrease and it tends to be the more complex matters that come to this office on external review. Although there is no way of knowing, it is to be hoped that the decreasing number of applications for external review, while there is an increasing number of decisions made by agencies, indicates that overall agencies are dealing better with their responsibilities under the FOI Act. During the four years, among other things, we increased the number of training courses run for agencies from 10 in 2002/03 to 16 in 2006/07, gave more than 40 briefings and responded to nearly 9,000 requests for advice or assistance. We reintroduced the monitoring of agencies' compliance with the obligation on each to publish an up-to-date information statement to ensure that the public has easy access to general information to assist in the exercise of their democratic rights.

I once again thank my small but very dedicated team of 9 officers who, in less than ideal circumstances, have continued to maintain high levels of effectiveness and efficiency in both the external review and advisory services delivered throughout the year, and have continued to look for and implement ongoing improvements in our processes and administration. Their commitment and positive attitude have never faltered and I wish them the very best with the challenges ahead.

Western Australia
OFFICE OF THE
INFORMATION COMMISSIONER

Our Ref: 16/064/00-01

Hon J McGinty MLA
Attorney General
4th floor, London House
216 St George's Terrace
PERTH WA 6000

Dear Attorney General

INFORMATION PRIVACY BILL 2006* AND *FREEDOM OF INFORMATION AMENDMENT BILL 2006

I refer to our meeting at Parliament House on Thursday 19 October 2006 concerning the above-mentioned draft legislation and the issues raised in my letter to you of 13 October 2006. I thank you for the opportunity to meet with you, Ms Pritchard, Ms Wright and Hon Justice Barker to discuss those matters.

I confirm that it was agreed at the meeting to address a number of the issues I raised in the following ways. Firstly, the specific, coercive investigative powers currently given to the Information Commissioner by ss.72 and 73 of the *Freedom of Information Act 1992* ('the FOI Act') will be retained by the proposed Information and Privacy Commissioner ('the Commissioner') under the amended FOI Act and ss.72 and 73 will not be repealed. The Commissioner will also be given similar specific investigative powers under the new privacy legislation.

It was also agreed that further provisions will be included in the proposed legislation to provide for procedures to be followed on completion of conciliation of a complaint, a mechanism for enforcement of conciliation agreements where necessary and a procedure to be followed on completion of an audit, examination or review conducted by the Commissioner, under both pieces of legislation. Finally, Ms Pritchard and I will communicate further about my other, specific comments made in my letter to her of 13 October 2006, as necessary.

My understanding was that two matters remained outstanding and for further consideration following the meeting. The first of those was whether Ministers should be exempt from the operation of the privacy legislation. I understand from our conversation that the underlying reason for the proposed exemption is to allow Ministers on occasion to publicly disclose personal information where it is considered necessary to do so for a particular purpose, such as publicly defending allegations made against the Government or a particular Minister.

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Under both freedom of information and privacy legislation there is always a balance to be struck between protecting personal rights and interests and the rights and interests of the community as a whole. I accept that, on occasion, there may well be a significant public interest in the disclosure of personal information about an individual. However, as I indicated in our meeting, I am not sure that maintaining Ministers' ability to do that requires a complete exemption of Ministers from the operation of the proposed privacy legislation. As I suggested, it appears to me that it would be preferable to retain that ability by way of a specific "public interest exemption" for Ministers, giving them the discretion to disclose personal information where it is considered to be in the public interest.

A concern was expressed by Ms Pritchard that the difficulty with that would be that the exercise of such a discretion would have to be reviewable. As it seems to me that such disclosures in those circumstances would be relatively rare rather than frequent, it is not clear to me why the exercise of such a discretion should not be reviewable. Provision could be made for a limited review, in that all that could be reviewed following a complaint would be whether the Minister had reasonable grounds for considering the disclosure to be in the public interest (that is, not a full merits review to determine whether or not the disclosure was, in fact, in the public interest). If a Minister were to choose to exercise such a discretion and disclose personal information about an individual that he or she would not otherwise be able to disclose – because the Minister considered there to be a significant public interest in disclosing that information – then the Minister should have no difficulty in articulating his or her reasons for considering disclosure to be in the public interest if called upon to do so.

As I indicated in our meeting, in neither New South Wales nor Victoria are Ministers exempt from the operation of the privacy legislation of the respective States, and it is not clear to me why Ministers should be entirely unaccountable for how they treat personal information that comes into their possession in their capacity as Ministers. It seems to me that an exemption of the kind I have suggested, with limited review on complaint, would go further towards striking the balance between the public interests in the protection of personal privacy, the accountability of Ministers for their decisions and the ability of Ministers to carry out their duties for the benefit of the community. It would need to be made clear, however, that any such exemption applied only to the Minister and not to the Minister's staff.

The other matter to which you indicated further consideration would be given following the meeting was the question of whether or not the Commissioner should retain the decision-making power currently exercised by the Information Commissioner under the FOI Act. My understanding is that, although you generally accepted my advice about the inevitable reduction in the conciliation rate that would follow from separating the decision-making power and the conciliation function; the undesirability for applicants of adding another step in the process of review; and the undesirability of reducing the efficiency, effectiveness and accessibility of the current process, your major concern was having a different process of review for FOI matters and privacy matters. At the meeting, I indicated that I did not consider that was necessarily a difficulty as, while there is some overlap in principles and procedures, the two regimes generally involve different issues and processes in any event.

On reflection, I accept that it would be preferable – in terms of principle and practicality – to have similar processes for external review under both pieces of legislation. However, it seems to me that, rather than separating the conciliation and the decision-making roles under both, it would be preferable to give the Commissioner the decision-making power under both, with a right of appeal on questions of law only to a judicial member or members of the State Administrative Tribunal ('the SAT') and no further appeal. For the reasons outlined in my letter of 13 October and in our meeting, keeping the two functions together would enable the current high rate of resolution by conciliation to be maintained.

A provision that there is no further appeal from the decision of a judicial member or members of the SAT would ensure four very significant factors. Firstly, it would mean that the Commissioner's decisions were still reviewable on questions of law by a senior judicial officer (as the Information Commissioner's currently are by the Supreme Court). Secondly, it would make the right of appeal more accessible to complainants than it is currently and therefore a more "real" than illusory right. As I pointed out in our meeting, the vast majority of appeals to date have been by agencies, which have the resources and wherewithal to enable them to mount an appeal to the Supreme Court, which are often not available to complainants. Thirdly, and most significantly, it would not add any more layers of review to the process than already exist. Fourthly, it would not preclude complaints involving matters of significant public interest being further judicially reviewed by the Supreme Court by way of the prerogative writs.

As you know, in 2004 this office moved premises to collocate with the Ombudsman, the Office of Health Review, the Commissioner for Public Sector Standards and the Commonwealth Ombudsman. The primary purpose of that was to further the Government's desire to improve accessibility to the services each of these offices provides by – to the extent possible – establishing a "one-stop shop" for people seeking advice or information or seeking to make a complaint about a government agency. That initiative has, in my view, achieved that aim to a large extent and has resulted in efficiencies through, among other things, shared accommodation and corporate and administrative services and greater communication and mobility of staff between the offices. It seems to me, however, that the proposal to transfer the Commissioner's decision-making power under the FOI Act to the SAT and to also separate the conciliation function and the decision-making power under the privacy legislation is contrary to that purpose.

What it will mean in practice – if a complaint has to go through the whole process – is that a person who has a complaint under either of those pieces of legislation will first have to deal with the agency or organisation concerned, then go to the Commissioner's office, then engage in a new process at the SAT, then take an appeal to the Supreme Court. Theoretically, of course, although it has not yet happened in practice in this State, there would remain the possibility of further appeal to the full court of the Supreme Court and appeal to the High Court of Australia.

If the decision-making power under both pieces of legislation were to reside with the Commissioner, with appeal on questions of law to the judicial members of the SAT and no further appeal, then the process would be improved in terms of efficiency and accessibility, rather than those essential elements of an effective, accessible process

being reduced. Under that system an applicant would first deal with the agency or organisation concerned, then with the Commissioner, then the SAT. Judicial review would of course remain available but would be only by leave of the Supreme Court and therefore exercised rarely and only in respect of matters involving a significant public interest. It seems to me that that would be a more streamlined process that would retain the current efficiency and effectiveness that has been achieved by the Western Australian Information Commissioner model and extend it to the new privacy regime.

I note that, in the costings that were provided to you, the SAT estimated an average cost of $3948 per complaint dealt with. That cost would be on top of the cost of any conciliation process undertaken by the Commissioner's office before the matter went to the SAT. It should be noted that the average cost per complaint dealt with by this office currently is $5413. That cost, however, includes both the conciliation and decision-making process. It is unlikely that that average cost per complaint will reduce significantly under the new legislation as our experience is that the vast majority of the work involved in dealing with complaints is undertaken up to the point of a matter being either conciliated or requiring a formal decision. The work involved in making and publishing a formal decision is a very small proportion of the process, particularly as there is no need to start the process over, the decision-maker already being familiar with the matter and the issues involved.

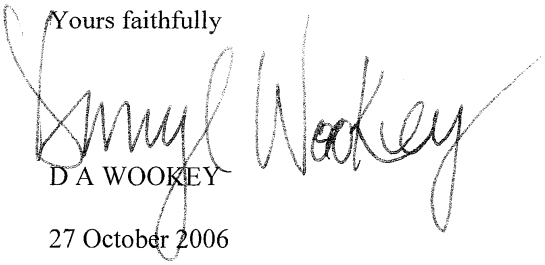
As you are aware, currently only 20% of matters dealt with by the office require a formal decision. As I explained in my letter of 13 October 2006, it is inevitable that without the "persuader" of being the ultimate decision-maker the rate of conciliated outcomes achieved by this office will significantly reduce and, in turn, the number requiring formal decision and therefore referral to the SAT will increase. It seems to me, therefore, that cost effectiveness is another strong reason for not separating the conciliation and decision-making functions and for both residing with the Commissioner.

I note that in the Commonwealth the Privacy Commissioner has the decision-making power with appeals from some decisions of the Commissioner being to the Federal Court or the Federal Magistrates Court, and appeals concerning awards of compensation by the Commissioner being to the Commonwealth equivalent of the SAT – the Administrative Appeals Tribunal. I am aware of no reason, therefore, why the Western Australian Commissioner could not exercise the decision-making power and the new office become a nationally and internationally recognised model of best practice as has the Western Australian Information Commissioner model.

As I have indicated, my primary concern is to ensure that whatever new model is adopted for both regimes remains as effective, efficient and accessible for members of the public and as effective in furthering good public administration and accountability in agencies as the current Information Commissioner model. While I understand that there is a desire to introduce the legislation into Parliament as soon as possible, I would respectfully urge you not to let that be the driving influence as to how to resolve this very significant outstanding issue. As always, I am more than happy to discuss these matters further with you at any time and to provide any assistance I can to ensure the timely introduction of the preferred model.

Thank you for your further consideration of these matters.

Yours faithfully



D A WOOKEY

27 October 2006

cc. Ms J Pritchard, Senior Assistant State Counsel

OFFICE OF THE
INFORMATION COMMISSIONER
Western Australia

Hon J McGinty MLA
Attorney General
4th floor, London House
216 St George's Terrace
PERTH WA 6000

Dear Attorney General

***THE AUSTRALIAN* ONLINE**

I refer to an article published on the website of *The Australian* newspaper this morning under the headline "AG, Commissioner Clash on FOI Reform".

I write to advise you that my comments to the reporter have been misrepresented and I have been quoted out of context.

I spoke to the journalist because I was concerned that his article in yesterday's edition of *The Australian* under the headline "State Bill to Give More FOI Access" wrongly gave the impression that the proposed amendments to the *Freedom of Information Act 1992* ('the FOI Act') will allow for greater access to information and wrongly gave the impression that there is currently no independent tribunal reviewing decisions made by government agencies under the FOI Act.

The words of mine which appear in quotation marks in the article were said in the course of explaining to the journalist that, contrary to the impression given in his article in the printed copy of *The Australian* yesterday, there does already exist an independent external arbiter of complaints under the FOI Act and that it is not the case that the Government has the last word on access to documents under the FOI Act.

As you are aware, although the provision for exemption certificates - which in 13 years of the operation of the FOI Act has never been used to prevent the disclosure of documents - is to be repealed, the exemptions available under the proposed amended FOI Act have not been reduced; to the contrary, an exemption has been added and the scope of the exemption provided by clause 8(1) will be clarified to ensure that its coverage is much broader than has been interpreted to date.

My comments in respect of the transfer of the Commissioner's decision-making power to the State Administrative Tribunal were the comments that I made to you in my letters of 13 and 27 October 2006, to the latter of which I have not yet received a reply from you. I did not say to the reporter that *"...the changes were simply aimed at creating work for the SAT"*, or anything like that.

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As I have advised you, my primary concerns about transferring the decision-making power to the SAT and splitting the conciliation and decision-making function are, firstly, that rather than streamlining the external review process it further complicates it by adding an extra step for complainants before they can obtain a decision on their complaint and, secondly, that without the persuasive influence of the parties being aware this office will make the final decision on the complaint, our current very high conciliation rate will be significantly reduced.

Given that my comments have been so badly misrepresented, I cannot be confident that you have been correctly quoted in this morning's article. However, if you have been correctly quoted, I am disappointed to say the least that you would choose to respond to the comments the journalist said I had made by publicly attacking me personally in describing them as *"self-serving nonsense"*.

I have no self-interest to serve in this matter. As you know, I am acting in the position of Information Commissioner and, whether or not the decision-making function is transferred to the SAT, once the legislation is enacted I will no longer hold this position. The views I have expressed to you and have expressed publicly are my genuinely-held views based on 13 years of experience in the field and a commitment to the principles of freedom of information and its contribution to government accountability and to practical, accessible avenues for members of the community to be able to have government decisions and administrative actions about which they are concerned reviewed.

I am also concerned that you would now seek to put forward as the rationale for the transfer of the decision-making power to the SAT an accusation of "horrendous delays" in this office.

Presently, this office finalises approximately 150 complaints per year and the average time taken by this office to finalise a complaint is 128 days. That time includes the time for investigation and attempted conciliation. The vast majority (30) of the 50 complaints presently being dealt with by this office are less than 6 months old, with 21 of those being less than 3 months old. Only 9 are more than 12 months old.

Although, on average, complaints to this office now take slightly longer to resolve than they did previously, the rate of conciliation has improved considerably in my time as Acting Information Commissioner (from 61.5% in 2002/03 to 72.4% currently). I accept that a small handful of the some 150 complaints finalised by my office each year have taken longer than desirable to finalise. However, the delay in those matters has not always been because of a delay in decision-making. For example, in one matter that was resolved by formal decision, the complaint was suspended for 4 months at the request of the complainant while he endeavoured to otherwise resolve his issues with the agency concerned. In a very small number of complaints, however, there has been a delay in decision-making.

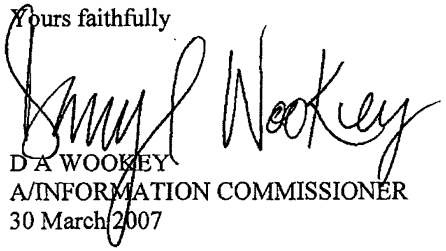
Part of the reason for that is that, when I was appointed Acting Information Commissioner, I was advised that it would be for a period of up to 12 months pending the enactment of legislation to "amalgamate" this office with that of the Ombudsman. In preparation for that, I reduced the size of the office and took on a considerable number of additional duties myself, with others distributed amongst my 9 staff

members, including my external review staff. Operating in that way was sustainable for 12 months or so but has stretched the office in the period since. Had I known then that it would take three and a half years for the legislation to be drafted and introduced into Parliament, I would not have implemented that arrangement or would have revised it in the interim.

In any event, the fact that there have been some delays in resolving a few matters in the last 3 years, while the office has essentially been in limbo, does not seem to me to be a reasonable basis for attacking and dismantling the Information Commissioner model which, as I have said, is nationally and internationally recognised as a model of best practice and which does have a proven track record over 13 years of providing an accessible, free, generally speedy, informal and independent avenue of external review of decisions. Similarly, any criticism you may have, whether justified or not, of my performance does not seem to me to be a reasonable basis for criticism of the model or dismantling it.

Clearly, you and I have different views in respect of the proposed new model. I have advised you of my view and the reasons for it, and you have advised me of yours, and I would like to think that we could each respect the other's view and agree to differ without allowing sensational and inaccurate reporting by a newspaper to detract from reasonable debate of the issue.

Yours faithfully



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A/INFORMATION COMMISSIONER
30 March 2007