

AGENCY PERFORMANCE REPORT ON OPERATIONS

2. AGENCY PERFORMANCE — REPORT ON OPERATIONS

2.1 DECISIONS OF INTEREST 2008/2009

The following section outlines decisions that relate to matters either expanded upon or not previously considered. Some of the decisions referred to here will be of interest to particular areas of government, such as local government, the Education Department and the Health Services. Other information is of more general interest, for example, dealing with electronic information stored on the hard drives of home computers.

Prescribed details

Under clause 3 of Schedule 1 to the Act, certain personal information about officers or contractors of agencies - referred to in the Act as 'prescribed details' - is not exempt from disclosure. That information includes, for example, those persons' names, titles or actions undertaken in the course of performing their functions or duties.

In *Re Rapinet and Department of Education and Training and C* [2008] WAICmr 29, the A/Commissioner dealt with a complaint from an applicant who sought access to documents which would reveal the names of the assessors who assessed the applicant's teaching portfolio as part of his application for status as a Level 3 classroom teacher. The A/Commissioner decided that, although the requested information was personal information about the assessors, it was not exempt from disclosure under clause 3 because it would do no more than reveal that the assessors had assessed the applicant's teaching portfolio in the course of performing a function or duty as officers of the agency or, alternatively, in the course of performing a service for the agency under a contract for services.

Local government and the storage of information on home computers

The A/Commissioner dealt with a number of complaints from a single applicant who applied to the Shire of Kalamunda for access to documents relating to a scheme amendment application, including emails sent to and from current and former councillors of the Shire: *Re Ross William Leighton and Shire of Kalamunda* [2008] WAICmr 48; *Re Ross William Leighton and Shire of Kalamunda* [2008] WAICmr 52; *Re Ross William Leighton and Shire of Kalamunda* [2008] WAICmr 54; and *Re Leighton and Shire of Kalamunda* [2009] WAICmr 1.

The complaints raised the question of whether or not emails sent or received by local government councillors (who are 'officers' of an agency), including former councillors, are 'documents of an agency' for the purposes of the Act. If so, those documents are potentially accessible under the Act.

The A/Commissioner decided that documents - which include emails - created or received by a councillor in his or her official capacity as an elected representative, and which constitute a record of the performance of any of the functions of a councillor as set out in section 2.1 of the *Local Government Act 1995* ('the LG Act'), are 'documents of an agency'. The A/Commissioner noted that, regardless of whether an agency or its

“Under clause 3 of Schedule 1 to the Act, certain personal information about officers or contractors of agencies - referred to in the Act as ‘prescribed details’ - is not exempt from disclosure.”

officers are obliged to retain emails of the kind requested, such documents in the possession of an agency are ‘documents of an agency’ for the purposes of the Act. The A/Commissioner considered that applicants would not lose their rights to access documents held by former councillors if the agency is entitled to access those documents.

In the circumstances of the relevant complaint, the A/Commissioner decided that, having regard to the obligations of chief executive officers under the LG Act in relation to local government records, and to the provisions for recovery of government records under Part 7 of the *State Records Act 2000*, the agency was entitled to access the requested documents, if any, in the hands of a former councillor. Consequently, such documents were ‘documents of the agency’ for the purposes of the Act.

The A/Commissioner decided that, in the circumstances of the case, it would be excessive to require the agency to conduct a forensic examination of the councillor’s home computer. The A/Commissioner was of the view that where officers are authorised to delete electronic documents and do so, agencies should not be required as a matter of course to conduct searches for that electronic information from the hard drives of computers. The A/Commissioner noted that ‘all reasonable steps’ to find documents might include a forensic examination of an agency’s or councillor’s computer if there was evidence to suggest that electronic information had been deleted in order to prevent an agency from giving access to it. However, there was no information before the A/Commissioner to suggest that was the case.

“On external review, the Information Commissioner has the power to require an agency to conduct further searches for documents ...”

Another key issue that arose for the A/Commissioner’s consideration was whether the agency had taken ‘all reasonable steps’ to locate the documents requested by the applicant. Section 26 of the Act provides that an agency may advise an applicant that it is not possible to give access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document is in the agency’s possession but cannot be found, or does not exist. On external review, the Information Commissioner has the power to require an agency to conduct further searches for documents: s.26(2).

The complainant submitted that the A/Commissioner could not properly find that all reasonable searches for the requested documents had been undertaken until a forensic examination of a councillor’s home computer had been undertaken.

Cabinet and Executive Council

Re Ravlich and Minister for Regional Development; Lands [2009] WAICmr 9 considered in detail the application of clauses 1(1), 1(1)(a) and 1(1)(b) of Schedule 1 to the Act and used extrinsic material taken from the debates following the Second Reading of the *Freedom of Information Bill 1992* to assist in interpreting those provisions. The decision also provides a guide to what form the ‘official publication’ of the fact of a deliberation or decision might comprise, when interpreting the limit on the exemption in clause 1(2).

Health services

In *Re Yoo and Sir Charles Gairdner Hospital* [2009] WAICmr 10, Sir Charles Gairdner Hospital refused an applicant (who had suffered complications following surgery) access to documents that were collected as part of a voluntary incident management system. The

agency claimed that the disclosure of such documents would reveal confidential information obtained in confidence that could reasonably be expected to prejudice the future supply of information of that kind to medical service providers and were, thus, exempt under clause 8 (2) of Schedule 1 to the Act.

The A/Commissioner considered whether the disclosure of information collected on a voluntary basis about a medical incident would, on balance, be in the public interest. In the circumstances of that case, although recognising that the balance of public interests was difficult, the A/Commissioner decided that it would be prejudicial to the proper and effective working of hospitals and health services to disclose the disputed documents.

Information protected by certain statutory provisions - Public Interest Disclosures

Clause 14(5) provides, among other things, that matter is exempt if its disclosure would reveal or tend to reveal the identity of anyone as:

- (a) a person who has made an appropriate disclosure of public interest information under the *Public Interest Disclosure Act 2003* ('the PID Act'); or
- (b) a person in respect of whom a disclosure of public interest information has been made under the PID Act.

The A/Commissioner was required to consider the meaning and scope of the exemption in the course of dealing with three complaints: *Re J and Office of the Public Sector Standards Commissioner* [2009] WAICmr 12; *Re J and Office of the Public Sector Standards Commissioner* [2009] WAICmr 13; and *Re K and Office of the Public Sector Standards Commissioner* [2009] WAICmr 14.

As part of that consideration, the A/Commissioner had regard to the Parliamentary debates held prior to the enactment of the PID Act and the inclusion of clause 14(5) in the Act, as recorded in *Hansard*. The A/Commissioner took the view that Parliament clearly intended that the identities of persons of the kind referred to in clause 14(5) should be protected from disclosure under the Act and that the Act should not be used to obtain that information.

The A/Commissioner noted that actual disclosure of the relevant identity is not required for the exemption to apply. It is sufficient that the relevant identity would tend to be revealed by disclosure of the information. The A/Commissioner held that the fact that a complainant knows or claims to know the identity of relevant persons from other sources is not determinative of the question as to whether the disputed documents would, if disclosed, reveal or tend to reveal the identities of the relevant persons.

The A/Commissioner decided that documents will be exempt under clause 14(5) if there is a real risk - as distinct from just a remote or fanciful risk or possibility - that their disclosure would identify or tend to identify a person of the kind described in paragraphs (a) or (b) of that provision.

“The A/Commissioner held that the fact that a complainant knows or claims to know the identity of relevant persons from other sources is not determinative of the question as to whether the disputed documents would, if disclosed, reveal or tend to reveal the identities of the relevant persons.”

2.2 EXTERNAL REVIEW

2.2.1 External Review Applications and Other Applications

A total of 222 applications, composed of 198 complaints (including 17 informal/invalid complaints) and 24 other kinds of applications under the FOI Act were received in 2008/2009. Table 1 shows the kinds of applications received and Table 2 the applicant and respondent groups.

TABLE 1: APPLICATIONS RECEIVED

APPLICATIONS FOR EXTERNAL REVIEW	No.
Complaints - valid	181
Complaints - informal/invalid	17
Section 66(6) applications - no internal review	11
Section 66(4) applications - out of time	6
Section 13(5) - applications for extension of time	5
Section 35(1) - waiver of requirement to consult	2
TOTAL	222

TABLE 2: BREAKDOWN OF VALID COMPLAINTS

Applicant Group	No.	Respondent	No.
Company	21	Board, Committee, Commission, Authority, Corporation	18
Government Agency	2	Department (ex. Police & Health)	47
Individual Citizen	66	Health Related	9
Media	3	Local Government	21
Member of Parliament	80	Minister	72
NFP Group	7	Police	9
Prisoner	2	University	5
TOTAL	181	TOTAL	181

2.2.2 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 s.28 of the Act;
- ❖ impose a charge or require the payment of a deposit; or
- ❖ not to amend personal information or make a notation as requested.

The 17 informal/invalid complaints received included complaints 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 Act.

Table 3 shows a summary of complaints received by agency type.

TABLE 3: COMPLAINTS RECEIVED (BY AGENCY TYPE)

AGENCY TYPE	COMPLAINTS		INFORMAL/INVALID		TOTAL	
	No.	%	No.	%	No.	%
State	88	44.44	13	6.57	101	51.01
Minister	72	36.36	0	0.00	72	36.36
Local	21	10.61	4	2.02	25	12.63
TOTAL	181	91.41	17	8.59	198	100

Note: One complaint lodged was with respect to the Minister for Sport and Recreation who held office prior to the change of Government in September 2008.

Table 4 details the number of complaints received in 2008/09 and the agencies concerned.

TABLE 4: COMPLAINTS RECEIVED

AGENCY	COMPLAINTS	INVALID	TOTAL	AGENCY	COMPLAINTS	INVALID	TOTAL
Agriculture and Food, Department of	3	1	4	Police Force of Western Australia	9	1	10
C&AHS - Princess Margaret Hospital for Children	1	0	1	Port Hedland Port Authority	1	0	1
Canning, City of	1	0	1	Premier and Cabinet, Department of the	7	0	7
Child Protection, Department for	1	0	1	Public Sector Commission	1	0	1
Cockburn, City of	1	1	2	Public Sector Standards Commissioner, Office of the	3	0	3
Consumer and Employment Protection, Department of	1	0	1	Public Trust Office	0	1	1
Corrective Services, Department of	3	3	6	Shark Bay, Shire of	1	0	1
Curtin University of Technology	2	0	2	SMAH - Fremantle Hospital	1	0	1
Edith Cowan University	1	0	1	SMAH - Royal Perth Hospital	1	0	1
Education and Training, Department of	3	0	3	Sport and Recreation, Department of	1	0	1
Education Services, Department of	1	0	1	State Administrative Tribunal	1	0	1
Environment and Conservation, Department of	6	0	6	Stirling, City of	1	0	1
Fire and Emergency Services Authority of Western Australia	1	0	1	Subiaco Redevelopment Authority	2	0	2
Fisheries, Department of	3	0	3	Subiaco, City of	3	0	3
Gosnells, City of	1	1	2	Swan, City of	1	0	1
Health Review, Office of	1	0	1	Toodyay, Shire of	1	0	1
Health, Department of	1	0	1	Treasury and Finance, Department of	3	1	4
Housing and Works, Department of	1	0	1	University of Western Australia, The	2	0	2
Industry and Resources, Department of	1	0	1	Water Corporation	3	0	3
Insurance Commission of Western Australia	1	0	1	Workers' Compensation & Rehabilitation Commission (WorkCover)	1	0	1
Irwin, Shire of	1	0	1	Ministers:			
Joondalup, City of	2	1	3	Agriculture and Food, Minister for	2	0	2
Kalamunda, Shire of	1	0	1	Attorney General	4	0	4
Kimberley College of TAFE	2	0	2	Child Protection, Minister for	3	0	3
Legal Aid Western Australia	2	0	2	Education, Minister for	9	0	9
Legal Profession Complaints Committee	1	0	1	Energy, Minister for	3	0	3
Local Government and Regional Development, Department of	1	0	1	Environment, Minister for	6	0	6
Main Roads Western Australia	1	0	1	Health, Minister for	4	0	4
Mandurah, City of	2	0	2	Indigenous Affairs, Minister for	1	0	1
Medical Radiation Technologists Registration Board of Western Australia	1	0	1	Local Government, Minister for	1	0	1
Mines and Petroleum, Department of	2	0	2	Mines and Petroleum, Minister for	4	0	4
Mosman Park, Town of	1	0	1	Planning, Minister for	2	0	2
Mundaring, Shire of	1	1	2	Police, Minister for	1	0	1
NMAHS - Osborne Park Hospital	1	0	1	Regional Development, Minister for	8	0	8
NMAHS - Sir Charles Gairdner Hospital	2	0	2	Sport and Recreation, Minister for	1	0	1
NMAHS - Women and Newborn Health Service	1	0	1	Training, Minister for	1	0	1
PathWest Laboratory Medicine WA	0	1	1	Transport, Minister for	6	0	6
Peppermint Grove, Shire of	1	0	1	Treasurer	14	2	16
Perth, City of	2	0	2	Water, Minister for	2	0	2
Planning and Infrastructure, Department for	7	3	10	TOTAL	181	17	198

2.2.3 Other Applications

Other applications received fell into the following categories:

- ❖ applicants or third parties seeking to lodge complaints out of time pursuant to s.66(4) of the Act, or without internal review pursuant to s.66(6);
- ❖ agencies seeking waiver of the requirement to consult with third parties when processing an application pursuant to s.35(1); and

- ❖ agencies seeking an extension of the permitted period of 45 days within which an agency must deal with an application (s.13(5)).

Twenty-four “other” applications were received in 2008/09, compared with 32 received in the previous reporting period. Table 5 gives a detailed breakdown of these applications and the agencies concerned.

TABLE 5: OTHER APPLICATIONS RECEIVED

AGENCY	OUT OF TIME s.66(4)	NO INTERNAL REVIEW s.66(6)	WAIVER OF REQUIREMENT TO CONSULT s.35(1)	EXTENSION OF TIME s.13(5)	T O T A L
Child Protection, Minister for	1				1
Commerce, Department of				1	1
Corrective Services, Department of		1			1
Education and Training, Department of	1				1
Fisheries, Department of		1			1
Forest Products Commission		2			2
Kalamunda, Shire of		1			1
Perth, City of		1			1
Planning and Infrastructure, Department for	1	1			2
Police Force of Western Australia	1				1
Port Hedland Port Authority		1			1
Premier and Cabinet, Department of the		1	1	2	4
Regional Development, Minister for	1				1
Royal Perth Hospital				1	1
Stirling, City of		1		1	2
University of Western Australia, The		1			1
Vincent, Town of			1		1
WACHS - South West	1				1
TOTAL	6	11	2	5	24

2.2.4 External Review Outcomes

A total of 168 applications, made up of 145 complaints (including informal/invalid complaints) and 23 other applications were finalised during the year. Table 6 gives details of the types of applications dealt with in the 2008/09 reporting period.

TABLE 6: APPLICATIONS DEALT WITH

TYPE OF APPLICATION	No.
Complaints (including informal/invalid)	145
Section 66(4) - out of time	5
Section 66(6) - no internal review	11
Section 13(5) - application for extension of time	5
Section 35(1) - application for waiver of requirement to consult	2
TOTAL	168

Table 7 shows a summary of the outcomes of complaints finalised during the year, by agency category.

TABLE 7: OUTCOME OF COMPLAINTS FINALISED (BY AGENCY CATEGORY)

AGENCY TYPE	CONCILIATED		PUBLISHED DECISION		DECLINED		TOTAL	
	No.	%	No.	%	No.	%	No.	%
State	37	50.00	31	41.89	6	8.11	74	57.81
Minister	26	86.67	4	13.33	0	0.00	30	23.43
Local	12	50.00	12	50.00	0	0.00	24	18.76
Total	75	58.60	47	36.72	6	4.68	128	100.00

Note: *Table 7 excludes Informal/Invalid complaints
One complaint finalised was with respect to the Minister for Sport and Recreation who held office prior to the change of Government in September 2008.*

TABLE 8: 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		
Agriculture and Food, Department of	2	1		1	1	5
Broome, Shire of	1					1
Canning, City of	2					2
Child Protection, Department for	1					1
Cockburn, City of					1	1
Consumer and Employment Protection, Department of	1					1
Corrective Services, Department of		1			3	4
Curtin University of Technology	1	1				2
Edith Cowan University	1					1
Education and Training, Department of	1			1		2
Education Services, Department of		1				1
Environment and Conservation, Department of	2					2
Fisheries, Department of	1	1				2
Gosnells, City of		1			1	2
Housing and Works, Department of	1					1
Indigenous Affairs, Department of				1		1
Industry and Resources, Department of	1	4	1			6
Insurance Commission of Western Australia	1		1			2
Irwin, Shire of	1					1
Joondalup, City of					1	1
Kalamunda, Shire of		3		1		4
Kimberley College of TAFE	1	1				2
Legal Aid Western Australia		1				1
Legal Profession Complaints Committee		1				1
Local Government and Regional Development, Department of			1			1
Mandurah, City of	1	1				2
Mines and Petroleum, Department of	1					1
Mosman Park, Town of	1					1
Mundaring, Shire of	1	1			1	3
Nedlands, City of	1					1
NMAHS - Graylands Selby-Lemnos and Special Care Health Service		1				1
NMAHS - Osborne Park Hospital		1				1

TABLE 8: 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		
NMAHS - Sir Charles Gairdner Hospital	1		1			2
NMAHS - Women and Newborn Health Service	1					1
PathWest Laboratory Medicine WA					1	1
Peppermint Grove, Shire of	1					1
Planning and Infrastructure, Department for	3				4	7
Police Force of Western Australia	4	2			4	10
Premier and Cabinet, Department of the	3	2				5
Public Sector Standards Commissioner,			3			3
Public Trust Office					1	1
Racing and Wagering Western Australia		1				1
Racing, Gaming and Liquor, Department of	1					1
Real Estate and Business Agents Supervisory Board	1		1			2
Serpentine/Jarrahdale, Shire of		2				2
Shark Bay, Shire of		1				1
SMAH - Fremantle Hospital	1					1
SMAH - Royal Perth Hospital				1		1
Sport and Recreation, Department of					1	1
State Administrative Tribunal	1					1
Stirling, City of	1					1
Subiaco Redevelopment Authority	1					1
Subiaco, City of	2			1		3
Toodyay, Shire of		1				1
Treasury and Finance, Department of	3				1	4
University of Western Australia, The	1				1	2
Workers' Compensation and Rehabilitation Commission (WorkCover)	1					1
Ministers:						
Minister for Agriculture and Food	2					2
Minister for Child Protection	2					2
Minister for Education	4					4
Minister for Environment	2					2
Minister for Health	2					2

TABLE 8: 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		
Minister for Housing and Works		1				1
Minister for Local Government	1					1
Minister for Mines and Petroleum	2					2
Minister for Planning	1					1
Treasurer	5				2	7
Minister for Regional Development	1		1			2
Minister for Sport and Recreation**			1			1
Minister for Transport	3	1				4
Minister for Water	1					1
TOTAL	75	31	10	6	23	145

* The Information Commissioner does not deal with a complaint if it is outside his jurisdiction and may not deal with it if it is frivolous, vexatious, misconceived or lacking in substance (s.67 of the Act). Table 8 includes Informal/Invalid complaints. Six of the 23 complaints declined related to formal complaints and the remaining 17 related to informal/invalid complaints.

** This complaint related to the Minister who held office prior to the change in Government in September 2008

TABLE 9: PUBLISHED DECISIONS

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0252008	Knowles	Royal Perth Hospital and Wade	04/07/2008
D0262008	Gavranich	Shire of Mundaring	14/07/2008
D0272008	Elphick	Department of Fisheries	16/07/2008
D0282008	Ridolfo	Police Force of Western Australia	17/07/2008
D0292008	Rapinet	Department of Education and Training and "C"	17/07/2008
D0302008	"D"	Graylands Selby-Lemnos and Special Care Health	29/07/2008
D0312008	Parolo	Shire of Serpentine/Jarrahdale	29/07/2008
D0322008	"E"	Racing and Wagering Western Australia	31/07/2008
D0332008	Deacons	Minister for Housing and Works; Heritage; Indigenous Affairs and Land Information	06/08/2008
D0342008	Melville Water Polo Club	Minister for Sport and Recreation *	15/08/2008
D0352008	Hunt and Humphry	Department of Industry and Resources, CITIC Pacific Mining Management Pty Ltd, Sino Iron Pty Ltd and Mineralogy Pty Ltd	20/08/2008
D0362008	Mineralogy Pty Ltd	Department of Industry and Resources and Hunt and Humphry	25/08/2008
D0372008	Leighton	Shire of Serpentine/Jarrahdale	28/08/2008
D0382008	Esperance Port Authority	Department of the Premier and Cabinet	29/08/2008

TABLE 9: PUBLISHED DECISIONS (cont...)

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0392008**	Mineralogy Pty Ltd	Department of Industry and Resources	15/09/2008
D0402008	Burns	Department of Agriculture and Food	22/09/2008
D0412008	"D"	Department of Agriculture and Food	22/09/2008
D0422008	Lance	City of Mandurah	30/09/2008
D0432008	Glasson	Legal Practitioners' Complaints Committee	14/10/2008
D0442008	"F"	NMAHS - Osborne Park Hospital	15/10/2008
D0452008	Goodall	City of Gosnells	29/10/2008
D0462008	Hemsley	City of Subiaco and Foxington Pty Ltd	30/10/2008
D0472008	Alvisse	Insurance Commission of Western Australia	30/10/2008
D0482008	Leighton	Shire of Kalamunda	31/10/2008
D0492008	Pearson	Real Estate and Business Agents' Supervisory Board	31/10/2008
D0502008	Leighton	Department of Local Government and Regional Development	31/10/2008
D0512008	Bold Park Parent Advisory Council (Inc)	Department of Education Services	12/11/2008
D0522008	Leighton	Shire of Kalamunda	20/11/2008
D0532008	Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation	Department of Indigenous Affairs	19/12/2008
D0542008	Leighton	Shire of Kalamunda	19/12/2008
D0552008	National Tertiary Education Industry	Curtin University of Technology	23/12/2008
D0012009	Leighton	Shire of Kalamunda	15/01/2009
D0022009	"G"	Department of Corrective Services	21/01/2009
D0032009	Novelly	Kimberley TAFE	12/02/2009
D0042009	Ballam	Shire of Toodyay	19/02/2009
D0052009	Travers	Minister for Transport	25/02/2009
D0062009	"H"	Police Force of Western Australia	05/03/2009
D0072009	"I"	Legal Aid Commission of Western Australia	24/03/2009
D0082009	Hargreaves	Shire of Shark Bay	26/03/2009
D0092009	Ravlich	Minister for Regional Development; Lands	02/04/2009
D0102009	Yoo	Sir Charles Gairdner Hospital	05/05/2009
D0112009	Glasson	Department of the Premier and Cabinet	08/05/2009
D0122009	"J"	Office of the Public Sector Standards Commissioner	13/05/2009
D0132009	"J"	Office of the Public Sector Standards Commissioner	14/05/2009
D0142009	"K"	Office of the Public Sector Standards	14/05/2009

* This complaint related to the Minister who held office prior to the change of Government in September 2008

** D0392008 finalised 3 complaints: F2008163; F2008164; and F2008165

2.2.5 Other Applications

There were 23 other applications finalised this year. They were applications to make a complaint out of time (s.66(4)); where internal review had not been applied for or completed (s.66(6)); applications for waiver of the requirement to consult third parties (s.35(1)); 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 10.

TABLE 10: OUTCOME OF OTHER APPLICATIONS FINALISED

AGENCY	NO INTERNAL REVIEW s.66(6)			OUT OF TIME s.66(4)		EXTENSION OF TIME S.13(5)		WAIVER OF REQUIREMENT TO CONSULT s.35(1)		TOTAL MATTERS FINALISED
	A	R	W	A	R	A	W	A	D	
Commerce, Department of						1				1
Corrective Services, Department of		1								1
Education and Training, Department of					1					1
Fisheries, Department of		1								1
Forest Products Commission		2								2
Kalamunda, Shire of	1									1
Perth, City of	1									1
Planning and Infrastructure, Department for		1			1					2
Police Force of Western Australia					1					1
Port Hedland Port Authority		1								1
Premier and Cabinet, Department of the			1				2	1		4
Regional Development, Minister for					1					1
SMAH - Royal Perth Hospital						1				1
Stirling, City of		1					1			2
University of Western Australia, The			1							1
Vincent, Town of									1	1
WACHS - South West					1					1
TOTAL	2	7	2	1	4	2	3	1	1	23

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

2.3 ADVICE AND AWARENESS

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

All members of my staff contribute 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 Act;
- ❖ provision of advice and assistance to members of the public on the procedure for exercising their rights under the Act;
- ❖ visits to country regions;
- ❖ briefings to community groups;
- ❖ production of articles providing advice and guidance on the workings of the 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.

2.3.1 Training Courses and Briefings

The office is proactive in raising awareness and understanding of the procedures and processes prescribed by the Act. Apart from requests received for training or assistance, public sector needs are identified from a survey of agencies. Due to staff turnover, there is a periodic need for new agency staff to be briefed on the FOI process and agencies' 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 speakers in response to invitations from organisations 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 11 on the following page.

TABLE 11: FORMAL TRAINING AND PRESENTATIONS

DATE	PRESENTATION STYLE	AUDIENCE
13 October 2008	FOI Coordinators' Workshop	Officers from State and local government agencies
7 November 2008	Decision-makers' Forum	Officers from State and local government agencies
21 November 2008	FOI Coordinators' Workshop	Officers from State and local government agencies
24 November 2008	FOI Coordinators' Workshop	Officers from State and local government agencies
1 December 2008	FOI Coordinators' Workshop	Officers from State and local government agencies
9 December 2008	FOI Briefing	Department of Health
13 January 2009	FOI Briefing	Officers from NMHS – Graylands
4 February 2009	FOI Coordinators' Workshop	Officers from State and local government agencies
6 February 2009	FOI Coordinators' Workshop	Officers from State and local government agencies
9 February 2009	Decision-makers' Forum	Department of Culture and the Arts
9 February 2009	FOI Briefing	Emanon
10 February 2009	FOI Briefing	Department of Health
6 March 2009	Decision-makers' Forum	Officers from State and local government agencies
10 March 2009	FOI Briefing	Department of Health
17 March 2009	FOI Briefing	Department of Environment and Conservation
24 March 2009	FOI Briefing	Department of Planning and Infrastructure
6 April 2009	FOI Coordinators' Workshop	Officers from State and local government agencies
28 April 2009	FOI Briefing	Support Staff – Ministers' offices
28 April 2009	FOI Briefing	Support Staff – Members of the Opposition
29 April 2009	FOI Briefing	Edith Cowan University – broadcasting students
4 May 2009	FOI Briefing	Officers from State and local government agencies - Kalgoorlie
5 May 2009	FOI Briefing	Kalgoorlie Regional Hospital
5 May 2009	FOI Briefing	Kalgoorlie community groups
8 May 2009	FOI Coordinators' Workshop	Officers from State and local government agencies
26 May 2009	FOI Briefing	Officers from NMHS – Graylands
27 May 2009	Decision-makers' Forum	City of Cockburn
29 May 2009	Decision-makers' Forum	Officers from State and local government agencies
2 June 2009	FOI Briefing	Officers from NMHS – Graylands
15 June 2009	Decision-makers' Forum	Officers from State and local government agencies
17 June 2009	Decision-makers' Forum	Officers from State and local government agencies
24 June 2009	FOI Briefing	Department for Planning and Infrastructure – Marine Safety
30 June 2009	FOI Briefing	Geraldton community groups

2.3.2 FOI Coordinator Workshops

Workshops are scheduled based on the level of demand and are conducted by the office at no charge to agencies. Eight full-day FOI Coordinators' workshops were held during the year in metropolitan and regional areas. The course introduces participants to the FOI legislation and the requirements which must be observed when dealing with an FOI application. Each session covers requests for information and the process to follow; exemptions; third party consultation; application fees and charges; notices of decision; and the role of the Information Commissioner. Participants have the opportunity to raise issues of concern and have the process explained to them in a practical way. Participants meet staff of the 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 arising from collocation with other accountability agencies is that we were able to host the majority of the FOI Coordinators' workshops in 2008/09 at our own premises. Feedback from participants who attended the workshops was very positive.

29 officers from local government agencies attended the workshops and 117 from State Government agencies (including Ministers' offices).



Regional Awareness - Accountability Agencies visit Kalgoorlie in May 2009 (see page 26 - 2.3.4)

Left to Right: Ruth Shean, Commissioner for Public Sector Standards; Linley Anne Donaldson, Director, Office of Health Review; Grace Grandia, Advisory/Projects Officer, Office of the Information Commissioner; Chris Field, Western Australian Ombudsman; Sandra Pelham, Investigations Officer, Commonwealth Ombudsman.

TABLE 12: FOI COORDINATORS' WORKSHOPS — ATTENDEES

Agriculture and Food, Department of (1)	Minister for Health; Indigenous Affairs, Office of the (1)
Albany, City of (2)	Minister for Local Government; Citizenship and Multicultural Interests, Office of the (1)
Belmont, City of (4)	Minister for Police; Emergency Services and Road Safety, Office of the (1)
Broome, Shire of (1)	Minister for Regional Development; Lands, Office of the (1)
Cambridge, Town of (1)	Minister for Sport and Recreation; Racing and Gaming, Office of the (1)
Canning, City of (1)	Minister for Transport, Office of the (2)
Child Protection, Department for (3)	Ministers Offices - Representatives (25)
Claremont, Town of (1)	Mundaring, Shire of (1)
Cockburn, City of (1)	Museum, Western Australia (1)
Commerce, Department of (15)	Nedlands, City of (1)
Culture and the Arts, Department of (1)	Northam, Shire of (2)
Curtin University of Technology (1)	Office of Energy (1)
Edith Cowan University (1)	Plumbers Licensing Board (2)
Education, Department of (2)	Police Force of Western Australia (4)
Fisheries, Department of (5)	Premier and Cabinet, Department of the (3)
Forest Products Commission (1)	Public Sector Commission (1)
Fremantle, City of (1)	Rockingham, City of (1)
Great Southern TAFE (1)	South Metropolitan Area Health Service (1)
Health Review, Office of (4)	State Library of WA (1)
Housing and Works, Department of (1)	Swan Districts Hospital (1)
Industrial Relations Commission, Office of the Registrar (1)	Swan TAFE (1)
Insurance Commission of Western Australia (2)	Swan, City of (1)
King Edward Memorial and Princess Margaret Hospitals (1)	Synergy (1)
Kwinana, Town of (1)	Toodyay, Shire of (1)
LandCorp (1)	Treasury & Finance, Department of (10)
Legal Practice Board of WA (1)	University of Western Australia, The (3)
Legal Practitioners Complaints Committee (1)	Victoria Park, Town of (2)
Main Roads Western Australia (1)	Victoria Plains, Shire of (1)
Mandurah, City of (5)	WA Country Health Service – Kimberley (1)
Medical Board of Western Australia (1)	WA Country Health Service – Pilbara (1)
Mines and Petroleum, Department of (2)	WA Country Health Service – Wheatbelt (1)
Minister for Child Protection; Community Services; Seniors and Volunteering, Office of the (1)	Wanneroo, City of (1)
Minister for Energy; Training, Office of the (2)	Workers' Compensation & Rehabilitation Commission (2)
Note: Number of officers in attendance shown in brackets	

2.3.3 Decision-makers' Forums

The half-day decision-makers' forum assists staff in agencies, including senior managers, to act as 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 Act; and the internal and external review processes. Attendees also establish contact with staff of my office who may be contacted for advice in the future, which is especially useful for those agencies that do not receive many applications. Six of these were conducted in 2008/09, attended by a total of 75 officers of State government agencies and 22 officers of local government agencies (including Ministers' offices).

TABLE 13: DECISION MAKERS' FORUMS — ATTENDEES

Cambridge, Town of (1)	Medical Board of Western Australia (2)
Child Protection, Department for (2)	Mines and Petroleum, Department of (1)
Cockburn, City of (15)	Minister for Child Protection; Community Services; Seniors and Volunteering (1)
Commerce, Department of (8)	Nedlands, City of (1)
Culture and the Arts, Department of (13)	Police Force of Western Australia (8)
Curtin University of Technology (3)	Premier and Cabinet, Department of the (3)
Education, Department of (1)	Public Sector Standards Commissioner, Office of the (2)
Fisheries, Department of (4)	Rottneest Island Authority (1)
Harvey, Shire of (2)	State Library of WA (3)
Housing and Works, Department of (2)	State Revenue, Office of (1)
Industrial Relations Commission (1)	Toodyay, Shire of (2)
Women & Newborn Health Service/Child Adolescent Health Service (1)	Treasury & Finance, Department of (8)
LandCorp (1)	University of Western Australia, The (1)
Legal Aid Western Australia (3)	WA Country Health Service – Midwest (1)
Legal Professions Complaints Committee (3)	WA Country Health Service – Wheatbelt (1)
Mandurah, City of (1)	

Note: Number of officers in attendance is shown in brackets

2.3.4 Regional Awareness Program:

- ❖ *Kalgoorlie-Boulder 4 – 5 May 2009*
- ❖ *Geraldton 30 June – 2 July 2009*

The office, along with other accountability agencies began a regional awareness program. The aim of the program is to bring awareness of the role of each agency to our regional areas. The start of this program began in 2008/09 and included visits to Kalgoorlie-Boulder and Geraldton. The purpose of the visit was to raise awareness of the services available. Seminars were held for community groups, members of the public, regionally-based public sector agencies and indigenous community groups. The process and procedures for applying for access to documents held by State or local government agencies were explained.

A briefing to staff of Kalgoorlie Hospital was held on 5 May 2009. The briefing included clarification of personal information, third party consultation; notices of decision and the review process. The briefing was informal and interactive, allowing for clarification of any points raised.

TABLE 14: REGIONAL VISIT — ATTENDEES

DATES	AGENCY/GROUP	NO. OF ATTENDEES
4 May 2009	State and Local government agencies	28
5 May 2009	Community Groups	8
5 May 2009	Kalgoorlie Hospital	30
5 May 2009	Indigenous Groups	18
30 June 2009	Community Groups	8

2.3.5 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 Act; *Publications* which contains the Act and Regulations, brochures and articles giving guidance on the FOI process; *Frequently Asked Questions (FAQs)* which contains guides to the FOI process and some of the most frequently cited exemption clauses; and *Decisions* which contains copies of all formal decisions made on complaints.

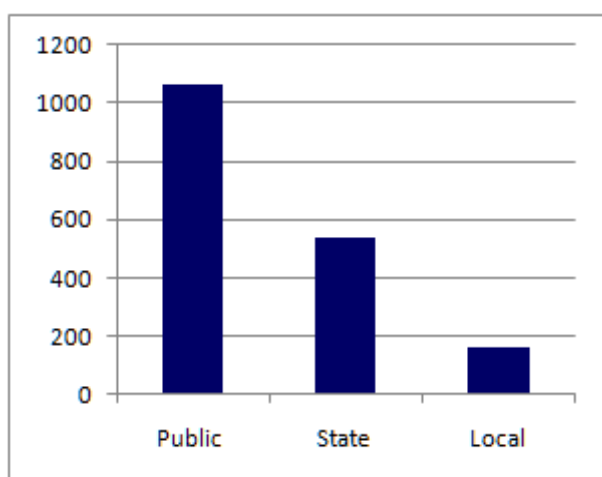
The web site allows searches of published decisions to be conducted in a variety of ways, such as searching by agency or complainant name; by exemption clause or section of the Act; by catchword; and many more. This is a valuable resource for agencies and members of the public to research the interpretation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

There are also links to other related web sites. The section *What's New/Training* contains the latest news and training information available and a facility to request training. *Contact Us* provides our contact details.

2.3.6 Telephone Enquiries

There were 1,765 telephone enquiries received during the year (1,942 in 2007/08). Over 60% (1,063) of telephone enquiries received (66% in 2007/08) 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 government (30%-539) and local government (9%-163) agencies seeking assistance in dealing with access applications or advice regarding other statutory obligations under the Act.

**Figure 1
Telephone Enquiries**



2.3.7 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 250 written enquiries for advice and assistance received and dealt with during the

year. The written enquiries were received by letter and by email.

Seventy three of these were misdirected access applications. That is, they were applications which should have been sent to the agency holding the documents sought and not to this Office. As in past years, the agencies the subject of the greatest number of misdirected applications were the Western Australia Police (33) and the Department of Corrective Services (15). Written enquiries, including misdirected applications, 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 Act. In some cases, where the enquiry was from an applicant, enquiries were also made with the agency concerned to ascertain the status of the application to assist the office in responding helpfully to the applicant and, if necessary, advice was also given to the agency in those cases.

Table 14 (over the page) shows a summary of applications that were mistakenly directed to this office instead of to the agency holding the documents.

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.

2.4 SUPPORT SERVICES

As of 19 February 2009, corporate service support is provided by the Shared Services business unit of the Department of Treasury and Finance. Previous corporate service support was provided by the Department of the Attorney General.

TABLE 15: MISDIRECTED APPLICATIONS RECEIVED

AGENCY	No.
Agency Unknown	4
Albany Port Authority	1
Child Protection, Department of	2
Commerce, Department of	1
Corrective Services, Department of (inc. Acacia Prison)	15
SMAH - Fremantle Hospital	2
NMAH - Graylands Selby-Lemnos and Special Care Health	1
Industrial Relations Commission	1
Insurance Commission of Western Australia Australia	1
Mines and Petroleum, Department of	1
Planning and Infrastructure, Department for	1
Police Force of Western Australia	33
Real Estate and Business Agents Supervisory Board	1
SMAH - Royal Perth Hospital,	5
State Administrative Tribunal	1
NMAHS - Swan Kalamunda Health Service	1
University of Western Australia, The	1
Wanneroo, Shire of	1
TOTAL	73

2.5 ADMINISTRATION

The Information Commissioner's statutory function under the Act necessitates the delivery of a range of services to the public, agencies and Parliament, including:

- ❖ complaint resolution;
- ❖ giving advice about the 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 located 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.