



Office of the **Information Commissioner**

ANNUAL REPORT 2009-2010



Office of the **Information Commissioner**

DEAR MR PRESIDENT
DEAR MR SPEAKER

ANNUAL REPORT 2009-2010

In accordance with the provisions of the *Financial Management Act 2006* and the *Freedom of Information Act 1992*, I submit my report for the year ended 30 June 2010 which has been prepared in compliance with the provisions and reporting requirements of both Acts.

A handwritten signature in blue ink, appearing to read 'Sven Bluemmel'.

Sven Bluemmel
INFORMATION COMMISSIONER

22 September 2010

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OVERVIEW

1. OVERVIEW



1.1 COMMISSIONER'S FOREWORD

I am pleased to present my second annual report as Western Australia's Information Commissioner.

I have taken many opportunities during the year to meet with agencies in order to better understand their business and gauge the need for further training and support in administering the *Freedom of Information Act 1992* (the Act). This has included agencies in the Perth metropolitan area as well as agencies in the Peel region, the Kimberley and the South West of the State. I have also used those opportunities to inform members of the wider community about their rights to access government documents under the Act.

“There is a significant unmet need for further training to government agencies to ensure that they correctly administer the Act.”

My discussions with agencies have highlighted the need for my office to continue providing training and other advisory services to government and the public. There is a significant unmet need for further training to government agencies to ensure that they correctly administer the Act. My office will build on its existing work in this regard, particularly through the use of technology in providing training and advisory services to regional Western Australia.

Two possible legislative amendments with significant merit continue to be brought to my attention. The first of these would remove the requirement for agencies to consult with officers or contractors where the agency only proposes to disclose non-exempt information about those persons, including their name and job description. The second would give agencies a discretion to refuse to deal with repeat applications for the same document from the same access applicant. I note that both of these

issues have been raised by my predecessors in past Annual Reports and were part of the proposed amendments in the *Freedom of Information Amendment Bill 2007*.

The year has also seen a number of other Australian jurisdictions undertake significant reforms of their freedom of information legislation. These reforms have generally adopted a similar external review model to Western Australia, namely an independent commissioner who can make legally binding decisions about FOI disputes. This new common approach to FOI administration is providing greater opportunities for cooperation between information commissioners in Australian jurisdictions, which will enhance the administration of the Act in Western Australia.

My dealings with complaints through the year have highlighted several areas where agency practice can be improved. The first of these relates to how agencies search for documents

when responding to a request for access to documents. Some complaints before me during the year alleged that an agency had failed to conduct proper searches for documents, in particular electronic documents such as emails. In a number of cases, I required further searches to be conducted which often revealed the existence of further documents. Common problems when searching for electronic documents included using search terms that are too narrow and not searching in all potential electronic folders or archives. While I did not find evidence of any calculated effort to conceal documents, this is unacceptable and has the potential to undermine trust in government. To address the issue, it is important that agencies carry out proper searches in the first place and document these precisely.

Agencies should also seek to make more government information available outside the formal FOI process, both proactively and on request. This has the potential to provide information to the public much faster and with less effort .

During the year my office carried out an independent review into the administration of freedom of information in Western Australia. A report was tabled in Parliament on 8 September 2010 and provides important insights into how effectively the Act is being administered. The review also identifies areas where agencies require more support and training.

As predicted in last year's report, the current year has seen a significant deterioration in my office's ability to resolve complaints under the Act in a timely manner. This is due to the large backlog of complaints resulting from the sharp and sustained increase in the number of complaints made by Members of Parliament about decisions of Ministers since December 2008. While the

influx of complaints has now returned closer to historical averages, the size and complexity of the backlog means that it will take some years for the situation to be rectified. Currently, complaints received in my office are unlikely to be resolved in less than six months. This contrasts with the one month timeframe envisaged in the Act. On current projections, it is unlikely that this will have improved by next year, despite the various steps taken by my office to improve efficiency and output.

The challenges identified above provide two clear focus areas for my office. The first is to continue efforts to reduce the backlog of complaints. In this regard, my office has made significant changes to how the complaints process is managed, with a view to improving efficiency and encouraging early conciliated resolution of disputes. The second is to provide further training and support for agencies.

I look forward to working with my team and with agencies across the State to continue improving the administration of freedom of information in Western Australia.

Sven Bluemmel
Information Commissioner

“Agencies should seek to make more government information available outside the formal FOI process.”

1.2 OPERATIONAL STRUCTURE

The office of Information Commissioner is established by s.55(1) of the *Freedom of Information Act 1992* (the Act) and the occupant is directly accountable to Parliament for the performance of the functions prescribed by the Act. The Information Commissioner is independent of executive government and reports directly to the Parliament and not to, or through, a Government Minister. The Attorney General is the Minister responsible for the administration of the Act, but has no specific role under the legislation.

The Commissioner is supported by staff in the Office of the Information Commissioner (OIC). The main function of the OIC is to provide independent external review of agencies' decisions by dealing with complaints about decisions made by agencies under the Act.

Other responsibilities prescribed by the Act include:

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

The following principles or values are part of the corporate philosophy of the OIC:

- ❖ 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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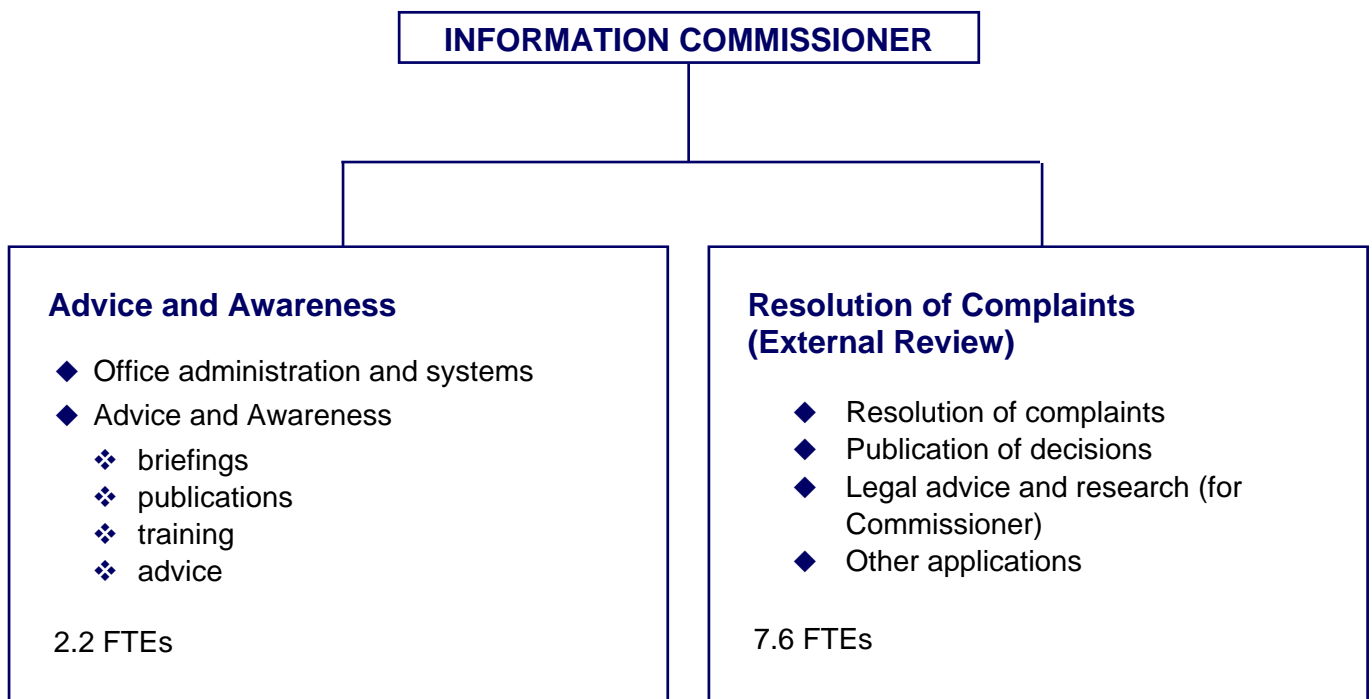
STAFF



Back row L to R: Vivien Hillyard, Investigations Officer; Tony Pruyn, Senior Investigations Officer; Grant Washer, Manager FOI Review; Kim Bracknell, Information Services Manager; Anne Marshall, A/Principal Legal Officer; Sven Bluemmel, Information Commissioner.

Front row L to R: Sylvie de Laroche, Administrative Assistant; Lavina Mandy, A/Legal Officer; Grace Grandia, Senior Advisory Officer; Michelle Fitzgerald, Executive Officer; Rachel Crute, A/Senior Legal Officer.

OFFICE STRUCTURE



1.3 PERFORMANCE MANAGEMENT FRAMEWORK

1.3.1 Outcome Based Management Framework

Desired Outcome

The primary desired outcome is access to documents and observance of processes in accordance with the Act.

This outcome contributes to the Government goals of financial and economic responsibility, outcomes based service delivery and social and environmental responsibility.

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