

**AGENCY PERFORMANCE
REPORT ON OPERATIONS**

2. AGENCY PERFORMANCE - REPORT ON OPERATIONS

2.1 Decisions and Cases of Interest 2010/2011

The following section outlines matters of interest dealt with during the year. It includes decisions of interest as well as some matters which were conciliated without requiring a formal decision.

Dealing with old documents, consent by spouse

An applicant from regional Western Australia applied to a health related agency for access to various documents relating to the applicant's admissions and treatment at a hospital in the early 1970s. As the hospital has since closed, the agency that had taken over responsibility for the relevant records of the now defunct agency dealt with the access application. However, as the requested documents related to events that took place nearly 40 years ago, the agency encountered some initial difficulties in identifying the requested documents. Following a series of searches and inquiries, the agency found a limited number of documents that had been copied to microfilm. Although not confirmed, it appeared that the original paper documents may have been destroyed when the hospital closed down.

The agency gave full access to some documents but refused access in full or in part to others. The agency claimed exemption under clause 3 of Schedule 1 to the FOI Act for the latter on the basis that it consisted of personal information about third parties.

Upon examination of the disputed documents by the Commissioner, it was evident that the spouse of the applicant was the main third party. Without confirming the content of the disputed documents, the Commissioner invited the

applicant to arrange for the applicant's spouse to give written consent to the disclosure of personal information about the spouse, which was done. On that basis the documents were disclosed and the complaint was conciliated.

Scope of applications for applicant's personal information

The applicant applied to the Health and Disability Services Complaints Office for documents relating to treatment he had received.

The applicant did not pay the \$30.00 application fee payable for an application for non-personal information and the agency advised him that he was only entitled to access personal information about himself. The agency gave him access to all of the personal information about him contained in the requested documents but deleted all the personal information about third parties on the basis that it was outside the scope of the access application.

The applicant disputed the agency's decision. Based on the A/Commissioner's examination of the agency's FOI file it was apparent that the agency had explained to the applicant that, since he had not paid the \$30.00 application fee, he was only entitled to access personal information about himself and not personal information about other people. The A/Commissioner upheld the agency's decision: *Re O'Donoghue and Health and Disability Services Complaints Office* [2011] WAICmr 20.

Searches for electronic documents

The Commissioner dealt with six separate complaints from the Hon. Adele Farina MLC against decisions of the former Treasurer, the Hon. Troy Buswell MLA (‘the former Treasurer’) which all involved claims that additional documents within the scope of those access applications existed or should exist pursuant to s.26 of the FOI Act: see *Re Farina and Treasurer* [2011] WAICmr 12; *Re Farina and Treasurer No.2* [2011] WAICmr 13¹; *Re Farina and Treasurer No.3* [2011] WAICmr 14; *Re Farina and Treasurer No.4* [2011] WAICmr 15; *Re Farina and Treasurer No.5* [2011] WAICmr 16; and *Re Farina and Treasurer No.6* [2011] WAICmr 17.

Section 26 provides that an agency may refuse access to a document if the agency is satisfied that all reasonable steps have been taken to find the document and the document is either in the agency’s possession but cannot be found or does not exist.

In the course of dealing with each of these complaints:

- ❖ Additional searches required by the Commissioner located further documents.
- ❖ The Commissioner considered that the former Treasurer had not taken all reasonable steps to locate documents within the scope of the application in the first instance, as required by s.26(1). Had all reasonable steps been taken to find those documents in the first instance, and had all documents that fell within the scope of the

application been correctly identified, the complaint might have been avoided or resolved much sooner.

- ❖ The Commissioner was satisfied, following completion of those further searches, that all reasonable steps had eventually been taken to locate emails within the scope of the access application.
- ❖ The Minister gave the complainant access to edited copies of the further documents located, after deleting small amounts of personal information under clause 3(1) and information that was outside the scope of the complainant’s application.

Those matters highlight the importance of proper searches being conducted by agencies (including Ministers) in the first instance: specifically, they highlight the need for adequate instructions to be given to officers conducting searches – particularly, as in these cases, when searching for emails – and for officers properly to record the specific searches made, including the locations searched and the search terms used. In these cases, not all of that information was recorded on the former Treasurer’s FOI files, so that the searches had to be conducted again on external review. This created an additional workload for both the Minister and the Department of the Premier and Cabinet (which provides information technology support to Ministers) and significantly increased the time it took for the Commissioner to deal with those matters.

Local government councilors and prescribed details about officers of agencies

Under clause 3 of Schedule 1 to the FOI Act, personal information about an individual is exempt from disclosure, subject to a number of limitations. Clause

¹ In the course of dealing with the complaints, the position of Treasurer came to be held after December 2010 by the Hon. Christian Porter MLA (‘the Minister’).

3(3) provides that certain information about officers or former officers of agencies is not exempt merely because its disclosure would reveal prescribed details about the officer or things done by the officer in the course of performing functions as an officer. Regulation 9(1) of the *Freedom of Information Regulations 1993* ('the Regulations') sets out these prescribed details in full.

In *Re Aniveb Pty Ltd & Blackbeard Pty Ltd trading as Urban Endeavour and Avon Capital Estates (Australia) Limited and City of Canning and 'Y'* [2010] WAICmr 28, the Commissioner considered whether local government councillors were 'officers of an agency' for the purposes of the FOI Act and whether certain information about those officers were prescribed details and therefore not exempt pursuant to clause 3(3).

In this case, the complainant sought access to a copy of a tape recording of a Council meeting relating to a specific item of discussion. During the external review, the complainant advised that it would be satisfied with a transcript of the relevant tape recording. The transcript identified a number of third parties, most of whom were councillors of the agency. All third parties consented to the disclosure of their personal information contained in the transcript, except one third party who was joined as a party to the complaint. That third party maintained that the transcript was exempt under clause 3(1) and submitted that while councillors were paid an allowance, they were not employed by the agency and therefore were not 'officers of the agency' as defined in the Glossary to the FOI Act.

The Commissioner noted the definition of 'officer of an agency' in the Glossary to the FOI Act which includes, among others, "(a) a member of the agency" and "(c) any person employed in, by, or for the

purposes of, the agency". The Commissioner noted that a councillor of the agency will be an 'officer of an agency' if that person comes within any one of those definitions. The Commissioner held that a local government councillor fell within the definition of "a member of the agency" as defined in the Glossary. The Commissioner considered that the plain meaning of "member" included a person formally elected as a member or councillor of a local government and was satisfied that councillors identified in the transcript were members of the agency and therefore officers of an agency for the purposes of the FOI Act.

In the circumstances of this case, the Commissioner considered that the personal information about officers of the agency contained in the transcript were 'prescribed details' as defined in regulation 9(1) of the Regulations and were not exempt because the transcript disclosed no more than the names, positions and opinions of officers of an agency on matters within the decision-making responsibilities of those officers. In reviewing that information, the Commissioner recognised that the *Local Government Act 1995* sets out the role of councillors which included participating in the local government's decision-making processes at council and committee meetings.

The Commissioner found that the transcript was not exempt under clause 3(1) and set aside the agency's decision to refuse access to it.

Membership information about political parties

The Australia First Party (NSW) Inc (AFPNSW), a political organisation, claimed that it was the successor to another, defunct, political organisation, the Australia First Party Incorporated

(AFP). AFPNSW sought access to the records of the AFP – including its membership records – which were held by the Associations and Charities unit of the agency following the cancellation of the AFP's incorporation pursuant to the *Associations Incorporation Act 1987*.

AFPNSW argued that the surplus property of the AFP had been distributed to it and it was entitled to the membership records as the successor organisation to the AFP. The AFPNSW took the view that the former members of the AFP were 'de facto members' of its organisation and argued that the disclosure of the membership records would, on balance, be in the public interest.

The Commissioner found that the disputed information was *prima facie* exempt under clause 3(1) because it would clearly identify particular individuals. The Commissioner considered the limit on that provision in clause 3(6), which required him to decide whether disclosure would, on balance, be in the public interest. In weighing the competing public interests, the Commissioner did not accept AFPNSW's assertions that in joining a political party, individuals gave up a certain element of privacy to the elected officers of that party or that they became de facto members of any successor party. The Commissioner noted that the FOI Act is intended to make government more accountable, not to unnecessarily intrude upon the privacy of individuals. In the circumstances of this particular case, the Commissioner held that the strong public interest in protecting privacy outweighed the public interests in favour of disclosure put forward by AFPNSW: *Re Australia First Party (NSW) Inc and Department of Commerce* [2010] WAICmr 32.

Public interest in disclosure of personal and business information

The complainant, a Member of Parliament, sought access to documents held by the Minister for Regional Development sent to or from the Minister's office to a mining company, Mineralogy Pty Ltd ('Mineralogy'), and its Chairman. Mineralogy is the principal proponent to a State Agreement. On external review, the complainant claimed, among other things, that further documents should exist. Searches required by the Commissioner's office resulted in the identification of six additional documents.

The Minister claimed exemption for the disputed documents under clauses 3 and 4 of Schedule 1 to the FOI Act. With regard to the clause 3 claim, the complainant submitted that the Chairman of Mineralogy had lobbied the State Government in relation to Mineralogy's business interests and there was, thus, a public interest in the disclosure of documents relating to the relationship between Mineralogy and the Government, pursuant to the limit on the exemption in clause 3(6). Both the Minister and Mineralogy submitted, among other things, that there was a strong public interest in protecting the personal privacy of individuals, such as the Chairman of Mineralogy.

The Commissioner found that the facts of the matter were in the public domain, having been reported in the media and discussed in Parliament. In addition, the information in the disputed documents about the Chairman was not information of a private character but related solely to his role as a representative of Mineralogy. Consequently, in weighing the competing public interests, the Commissioner gave less weight to the public interest in the protection of people's privacy and found

that particular public interest was outweighed by the public interests in government transparency and accountability in this case: *Re McGowan and Minister for Regional Development; Lands and Mineralogy Pty Ltd* [2011] WAICmr 2.

Infringing the privileges of Parliament

During the reporting period, the Commissioner considered a claim for exemption under clause 12(c) of Schedule 1 to the FOI Act. That provision provides that matter is exempt if its public disclosure would “*infringe the privileges of Parliament.*” The documents in question were two letters sent by a Standing Committee of Parliament to the Chief Executive Officers of two government agencies.

The Commissioner considered the question of parliamentary privilege, which confers certain rights and immunities on Parliament, its committees, members and officers. Although no previous decisions on this matter had been decided in this State, the Commissioner noted relevant decisions made under FOI legislation in other jurisdictions. The Commissioner held that the disputed documents were protected by parliamentary privilege because they were communications made in the course of, or for the purposes of, or incidental to, transacting the business of a House or a committee of Parliament. In addition, their disclosure under the FOI Act would infringe the privileges of Parliament, noting that the *Parliamentary Privileges Act 1891* sets out relevant privileges in section 1, including the control of publication of Parliamentary proceedings: *Re Ravlich and Department of the Premier and Cabinet* [2011] WAICmr 3.

Disclosure not in the best interests of a child

Information was provided to the Department for Child Protection about the complainant’s daughter in relation to a particular matter. The complainant’s daughter has an acquired brain injury and she has limited or no insight into her actions. The agency made a series of inquiries in respect of the information it had received and, following the completion of those inquiries, advised the complainant, albeit in broad terms, of the outcome of those inquiries. In particular, the agency advised the complainant that it had closed its involvement in the matter on the basis that the initial information it had received was unsubstantiated. The complainant sought access to copies of various documents relating to the agency’s investigation of the matter it had handled involving his daughter.

Although the agency gave access to some documents, it refused access to most of the requested documents under section 23(4) of the FOI Act. The agency advised the complainant that the information contained in the disputed documents consisted of personal information about another person (his daughter), who is a child under the age of 16 years. The agency considered that she did not have the capacity to appreciate the circumstances and that it was not in the best interests of the child to release the information to the complainant under the FOI Act.

The Commissioner described four relevant issues he must be satisfied on in deciding a matter under section 23(4).

Those issues are:

- ❖ he must be satisfied that the requested documents contain personal information about a child who has not turned 16;

- ❖ it must be established that the decision-maker, at the relevant time, was satisfied that giving access to the requested documents would not be in the best interests of the child;
- ❖ he must be satisfied that the decision-maker, at the relevant time, held the view that the child does not have the capacity to appreciate the circumstances and make a mature judgement as to what might be in her best interests; and
- ❖ he must be satisfied that the views of the decision-maker on the above issues were held on reasonable grounds.

The Commissioner noted the complainant's submissions and acknowledged his concerns and the issues he had raised. However, the complainant's submissions were not relevant to the matters for the Commissioner's determination. Having considered all of the material before him, the Commissioner was satisfied that the agency had satisfied the relevant issues for his consideration and he confirmed the agency's decision: *Re "C" and Department for Child Protection* [2011] WAICmr 11.

2.2 EXTERNAL REVIEW

2.2.1 External Review Applications and Other Applications

A total of 143 applications composed of 127 complaints (including 22 informal/invalid complaints) and 16 other kinds of applications under the Act were received in 2010/2011. 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	105
Complaints - informal / invalid	22
Section 66(4) - applications - out of time	8
Section 66(6) - applications - no internal review	7
Section 13(5) - applications for extension of time	1
TOTAL	143

TABLE 2: BREAKDOWN OF VALID COMPLAINTS

APPLICANT GROUP	No.	RESPONDENT GROUP	No.
Individual Citizen	48	Department (ex. Police & Health)	43
Company	23	Local Government	18
Member of Parliament	12	Board, Committee, Commission, Authority, Corporation	13
NFP Group	9	Minister	12
Media	7	Health Related	12
Prisoner	6	Police	7
TOTAL	105	TOTAL	105

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 22 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	75	59.06	17	13.39	92	72.45
Minister	12	9.45	3	2.36	15	11.81
Local	18	14.17	2	1.57	20	15.74
TOTAL	105	82.68	22	17.32	127	100.00

Table 4 details the number of complaints received in 2010/11 and the agencies concerned.

TABLE 4: COMPLAINTS RECEIVED

AGENCY	COMPLAINTS INVALID	TOTAL	AGENCY	COMPLAINTS INVALID	TOTAL	
State Agencies:						
Agency Unknown	0	3	Transport, Department of	1	0	1
Agriculture and Food, Department of	5	1	Treasury and Finance, Department of	1	0	1
Attorney General, Department of the	2	0	WACHS - South West	1	0	1
Challenger Institute of Technology	1	0	Water, Department of	2	0	2
Chemistry Centre Western Australia	1	0	West Coast Institute of Training	1	0	1
Child Protection, Department for	2	1	Western Power	1	0	1
Commerce, Department of	2	0	<i>Sub-total:</i>	75	17	92
Corrective Services, Department of	5	1	Local Agencies:			
Education, Department of	1	2	Bayswater, City of	1	0	1
Environment and Conservation, Department of	7	1	Beverley, Shire of	1	0	1
Fisheries, Department of	2	0	Broome, Shire of	2	1	3
Fremantle Port Authority	3	0	Cambridge, Town of	1	0	1
Government Employees Superannuation Board	1	1	Cockburn, City of	2	0	2
Health, Department of	2	0	Denmark, Shire of	1	0	1
Indigenous Affairs, Department of	1	0	Joondalup, City of	2	0	2
Main Roads Western Australia	1	0	Kalamunda, Shire of	1	0	1
Medical Board of Western Australia	0	1	Mandurah, City of	1	0	1
Mines and Petroleum, Department of	1	0	Nedlands, City of	0	1	1
NMAHS - Mental Health	2	1	Northampton, Shire of	1	0	1
NMAHS - Osborne Park Hospital	1	1	Stirling, City of	1	0	1
NMAHS - Sir Charles Gairdner Hospital	1	1	Subiaco, City of	1	0	1
Planning, Department of	3	0	Swan, City of	1	0	1
Police, Western Australia	7	2	Toodyay, Shire of	1	0	1
Port Hedland Port Authority	1	0	Victoria Plains, Shire of	1	0	1
Premier and Cabinet, Department of the	2	0	<i>Sub-total:</i>	18	2	20
Professional Combat Sports Commission	1	0	Ministers:			
Public Sector Commission	1	0	Agriculture and Food, Minister for	1	0	1
Public Sector Standards Commissioner, Office of the	0	1	Attorney General	1	1	2
Public Transport Authority	1	0	Education, Minister for	1	0	1
Racing and Wagering Western Australia	1	0	Environment, Minister for	1	2	3
Regional Development and Lands, Department of	1	0	Forestry, Minister for	1	0	1
SMAH - Bentley Hospital	1	0	Health, Minister for	1	0	1
SMAH - Fremantle Hospital	2	0	Local Government, Minister for	1	0	1
SMAH - Royal Perth Hospital	2	0	Mines and Petroleum, Minister for	1	0	1
State Administrative Tribunal	1	0	Planning, Minister for	1	0	1
State Development, Department of	1	0	Regional Development; Lands, Minister for	1	0	1
Tourism Commission, Western Australian	1	0	Transport, Minister for	2	0	2
Training and Workforce Development, Department of	1	0	<i>Sub-total:</i>	12	3	15
			TOTAL	105	22	127

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

Sixteen “other” applications were received in 2010/11, compared with 19 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)	EXTENSION OF TIME s.13(5)	T O T A L
Bayswater, City of	1			1
Commerce, Department of		1		1
Denmark, Shire of		1		1
Fisheries, Department of			1	1
Health, Minister for	1			1
Lotteries Commission		1		1
Main Roads Western Australia	1			1
Manjimup, Shire of	1			1
NMAHS - Graylands, Selby-Lemnos and Special Care Health Service		1		1
Perth, City of	1			1
Premier and Cabinet, Department of the		1		1
Public Transport Authority		1		1
Rockingham, City of	1			1
Roebourne, Shire of		1		1
Treasury and Finance, Department of	1			1
Vincent, Town of	1			1
TOTAL	8	7	1	16

2.2.4 External Review Outcomes

A total of 143 applications, made up of 128 complaints (including 22 informal/invalid complaints) and 15 other applications were finalised during the year. Table 6 gives details of the types of applications dealt with in the 2010/11 reporting period.

TABLE 6: APPLICATIONS DEALT WITH

TYPE OF APPLICATION	No. FINALISED
Complaints - valid	106
Complaints - informal / invalid	22
Section 66(4) - out of time	7
Section 66(6) - no internal review	7
Section 13(5) - application for extension of time	1
TOTAL	143

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	31	55.36%	23	41.07%	2	3.57%	56	52.83%
Minister	21	63.64%	12	36.36%	0	0.00%	33	31.13%
Local	13	76.47%	3	17.65%	1	5.88%	17	16.04%
Total	65	61.32%	38	35.85%	3	2.83%	106	100.00%

Note: Table 7 excludes Informal/Invalid complaints

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 SUBSTITUTED		
Agriculture and Food, Department of	1					1
Attorney General, Department of	2			1		3
Bassendean, Town of	1					1
Bayswater, City of	1					1
Belmont, City of	1					1
Bunbury, City of				1		1
Cambridge, Town of	1					1
Canning, City of	2			1		3
Challenger Institute of Technology	1					1
Child Protection, Department for		1				1
Cockburn, City of	1					1
Commerce, Department of		2	1	1		4
Communities, Department for		1				1
Education, Department of	1					1
Environment and Conservation, Department of	3		1			4
Forest Products Commission	1					1
Government Employees Superannuation Board		1				1
Health, Department of	1					1
Health and Disability Services Complaints Office		1				1
Kalamunda, Shire of	1					1
Local Government, Department of		1	1			2
Main Roads Western Australia	2					2
Mandurah, City of	1					1
Medical Board of Western Australia	1					1
Mines and Petroleum, Department of	1		1			2
Murray, Shire of	1	1				2
NMAHS - Mental Health	1	1				2
NMAHS - Sir Charles Gairdner Hospital	1					1
Planning, Department of	4				1	5
Police, Western Australia		2				2
Port Hedland, Town of	1					1
Port Hedland Port Authority	3					3

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		
Premier and Cabinet, Department of the	2		1			3
Public Advocate, Office of the	1					1
Public Sector Commission	1					1
Public Sector Standards Commissioner, Office of the	1		1			2
SMAH - Bentley Hospital	1					1
SMAH - Fremantle Hospital	1				1	2
SMAH - Royal Perth Hospital		1				1
Sport and Recreation, Department of		1				1
Subiaco, City of	1					1
Toodyay, Shire of	1					1
Training and Workforce Development, Department of		1				1
Treasury and Finance, Department of		1				1
Victoria Plains, Shire of					1	1
Western Power	1					1
Workcover Western Australia Authority (Workcover WA)		1				1
Sub-Total: Agencies	44	16	6	4	3	73
Ministers:						
Attorney General	1	2				3
Energy, Minister for	3					3
Environment, Minister for	3	1				4
Forestry, Minister for		1				1
Health, Minister for	1					1
Local Government, Minister for	1					1
Planning, Minister for	2					2
Police, Minister for		1				1
Regional Development; Lands, Minister for	2		1			3
Training, Minister for	2					2
Transport, Minister for	3					3
Treasurer	3	6				9
Sub-Total: Ministers	21	11	1	0	0	33
Progressive-Total: All Complaints	65	27	7	4	3	106

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		
Informal / Invalid Complaints						
Agency Unknown					3	3
Agriculture and Food, Department of					1	1
Attorney General					1	1
Cambridge, Town of					1	1
Child Protection, Department of					1	1
Corrective Services, Department of					1	1
Education, Department of					2	2
Environment, Minister for					2	2
Environment and Conservation, Department of					1	1
Government Employees Superannuation Board					1	1
Medical Board of Western Australia					1	1
NMAHS - Mental Health					1	1
NMAHS - Osborne Park Hospital					1	1
NMAHS - Sir Charles Gairdner Hospital					1	1
Northampton, Shire of					1	1
Police, Western Australia					2	2
Public Sector Standards Commissioner, Office of the					1	1
Sub-Total: Informal/Invalid					22	22
TOTAL	65	27	7	4	25	128

Note: 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. Three of the complaints declined related to formal complaints and the remainder declined related to informal/invalid complaints.

TABLE 9: PUBLISHED DECISIONS

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0222010	Braybrooke	Department of Treasury and Finance (Office of State Revenue)	30/07/2010
D0232010	"X"	Department of Local Government	18/08/2010
D0242010	Boyd	Minister for Police; Emergency Services; Road Safety	18/08/2010
D0252010	Malik	Office of the Public Sector Standards Commissioner	27/10/2010
D0262010	Dow-Hall	Department of Training and Workforce Development	27/10/2010

TABLE 9: PUBLISHED DECISIONS (cont...)

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0272010	The Wilderness Society (WA) Inc	Minister for Environment; Youth	28/10/2010
D0282010	Aniveb Pty Ltd & Blackbeard Pty Ltd trading as Urban Endeavour and Avon Capital Estates (Australia) Limited	City of Canning and "Y"	29/10/2010
D0292010	McGowan	Shire of Murray	03/11/2010
D0302010	Commercial Properties Pty Ltd	City of Bunbury and Another	17/11/2010
D0312010	Glasson	Department of Commerce	03/12/2010
D0322010	Australia First Party (NSW) Inc.	Department of Commerce	13/12/2010
D0332010	Audio Visual Image'Nation Pty Ltd	Department of the Attorney General and Another	14/12/2010
D0342010	"Z"	Department of Commerce	17/12/2010
D0352010	Apache Northwest Pty Ltd	Department of Mines and Petroleum and Lander and Rogers, Lawyers	30/12/2010
D0012011	"A"	Department of Sport and Recreation	06/01/2011
D0022011	McGowan	Minister for Regional Development; Lands and Mineralogy Pty Ltd	24/01/2011
D0032011	Ravlich	Department of the Premier and Cabinet	16/02/2011
D0042011	Nichols	Government Employees Superannuation Board	17/02/2011
D0052011	Subiaco's Past Players' and Officials' Association (Inc)	Department of Commerce	03/03/2011
D0062011	Treby	Department of Local Government	29/03/2011
D0072011 *	Ravlich	Attorney General	31/03/2011
D0082011	Watson	Minister for Forestry	05/04/2011
D0092011	"B"	Western Australia Police	06/04/2011
D0102011	Allison and Allison	Western Australia Police	07/04/2011
D0112011	"C"	Department for Child Protection	14/04/2011
D0122011	Farina	Treasurer	29/04/2011
D0132011	Farina	Treasurer	29/04/2011
D0142011	Farina	Treasurer	29/04/2011
D0152011	Farina	Treasurer	29/04/2011
D0162011	Farina	Treasurer	29/04/2011
D0172011	Farina	Treasurer	29/04/2011
D0182011	"D"	North Metropolitan Area Health Service - Mental Health	16/05/2011
D0192011	"E"	Royal Perth Hospital	31/05/2011

* D0072011 decided two complaints

TABLE 9: PUBLISHED DECISIONS (cont...)

DECISION NUMBER	COMPLAINANT	RESPONDENT	DECISION DATE
D0202011	O'Donoghue	Health and Disability Services Complaints Office	14/06/2011
D0212011	Amos	Workcover Western Australia Authority	24/06/2011
D0222011	Blahusiak	Department for Communities	24/06/2011
D0232011	Courtney	Department of Environment and Conservation	30/06/2011

2.2.5 Other Applications

There were 15 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)); 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)	TOTAL MATTERS FINALISED
	R	W	R	A	
Bayswater, City of			1		1
Commerce, Department of	1				1
Denmark, Shire of	1				1
Fisheries, Department of				1	1
Lotteries Commission	1				1
Main Roads Western Australia			1		1
Manjimup, Shire of			1		1
NMAHS - Graylands Selby-Lemnos and Special Care Health Services	1				1
Perth, City of		1			1
Premier and Cabinet, Department of the	1				1
Public Transport Authority	1				1
Rockingham, City of			1		1
Roebourne, Shire of	1				1
Treasury and Finance, Department of			1		1
Vincent, Town of			1		1
TOTAL	7	1	6	1	15

Key: A-Approved; W-Withdrawn; R-Refused

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 the OIC.

All members of the OIC contribute to 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 OIC.

Training Courses and Briefings

The OIC 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 OIC 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. A summary of attendees at these presentations is shown in Table 11 on page 30. A list of the briefings, presentations and training sessions given by staff of the OIC are shown in Table 12 on page 31.

The Legal Practice Board of Western Australia recognises the OIC as a QA Provider for the purposes of the *Legal Profession Rules 2009*. Accordingly, legal practitioners may claim CPD points for attendance at training provided by the OIC as outlined on the OIC website.

FOI Coordinators Workshops

Workshops are scheduled based on the level of demand and are conducted by the OIC at no charge to agencies. Eleven 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 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 OIC who can subsequently 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 co-location with other accountability agencies is that OIC was able to host the majority of the FOI coordinators workshops in 2010/11 at its own premises. Feedback from participants who attended the workshops was very positive.

32 officers from local government agencies attended the workshops and 185 from State government agencies (including Ministers' offices).

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 an application; refusing to deal with an application; considering exemptions; applying the public interest test; preparing a notice of decision that complies with the Act; understanding the internal and external review processes; and making decisions. Attendees also establish a relationship with staff of the OIC who may be contacted for advice in the future, which is especially useful for those agencies that do not receive many applications. Six decision-makers forums were conducted in 2010/11, attended by a total of 74 officers of State government agencies (including Ministers' offices) and 22 officers of local government agencies.

Regional Awareness Program:

- *Albany 18 – 19 November 2010*
- *Bunbury 25 January 2011*

Regional visits offer the opportunity to raise public and agency awareness of FOI procedures and processes to improve decision-making and to meet officers of State and local government agencies.

As part of the Regional Awareness Program, the OIC visited Albany together with other key accountability agencies. The OIC also visited the City of Bunbury. Seminars were held for community groups, members of the public and regionally-based public sector agencies. The OIC delivered a number of workshops and briefings explaining the process and procedures that apply when dealing with applications for documents held by State or local government agencies.

Comprehensive briefing sessions were presented to staff at Albany Hospital for the WACHS – Great Southern and local government agencies. The briefings included clarification of personal information, third party consultation, notices of decision and the review process. The briefings were informal and interactive, allowing for immediate clarification of any points raised.

A comprehensive FOI briefing session was conducted for officers of the City of Bunbury.

On 16 November 2010 a briefing session was also presented to staff of the Western Australian Country Health Service (WACHS) via video-link which covered country and regional hospitals.

TABLE 11: ATTENDEES AT PRESENTATIONS

TRAINING SESSIONS (No.)	STATE GOVERNMENT	LOCAL GOVERNMENT	MINISTERIAL STAFF	TOTAL
FOI Coordinators Workshops (11)	180	32	5	217
Decision-Makers Forums (6)	71	22	3	96
			Sub-total	313
BRIEFINGS (No.)				TOTAL
Agencies (14)				793
Public (7)				100
Presentations by the Information Commissioner (6)				784
			Sub-total	1677
GRAND TOTAL OF ATTENDEES				1990

TABLE 12: FORMAL TRAINING AND PRESENTATIONS

DATE	PRESENTATION STYLE	AUDIENCE
14 July 2010	FOI Coordinators Workshop	Officers from Department of Training & Workforce Development
23 July 2010	Presentation	Speech - Admin Law Conference (Sydney)
28 July 2010	FOI Briefing	Town of Claremont
10 August 2010	Decision-makers Forum	Officers from State and local government agencies
18 August 2010	Decision-makers Forum	Public Sector Commission
25 August 2010	FOI Coordinators Workshop	Officers from State and local government agencies
2 September 2010	FOI Briefing	Economic Regulation Authority
7 September 2010	FOI Briefing	University of Notre Dame
22 September 2010	FOI Coordinators Workshop	Officers from State and local government agencies
5 October 2010	FOI Briefing	FOI Coordinators/Managers Network Meeting (Graylands)
12 October 2010	Decision-makers Forum	Officers from State and local government agencies
19 October 2010	FOI Briefing	AIAL Lunchtime Seminar (Re: FOI Review)
20 October 2010	Presentation	ISACA conference - deliver keynote speech on FOI
5 November 2010	FOI Briefing	Address to PSC/OPSSC
9 November 2010	FOI Coordinators Workshop	Officers from State and local government agencies
16 November 2010	FOI Coordinators Workshop	WACHS (videoconference)
18 November 2010	Briefing	Public authorities - Albany
18 November 2010	Briefing	Community groups - Albany
18 November 2010	FOI Coordinators Workshop	Officers from local government agencies - Great Southern
19 November 2010	FOI Coordinators Workshop	Officers from government hospitals - Great Southern Health
2 December 2010	FOI Briefing	FOI Coordinators forum - Discussion of FOI Review Report
25 January 2011	FOI Briefing	Officers from local government agency - City of Bunbury
2 February 2011	FOI Briefing	PSC - Induction
9 February 2011	FOI Coordinators Workshop	Officers from State and local government agencies
15 February 2011	Decision-makers Forum	Officers from local government agencies held at City of Cockburn
2 March 2011	FOI Briefing	PSC - Induction
17 March 2011	Decision-makers Forum	Officers from State and local government agencies
24 March 2011	Presentation	National Information Law conference - Canberra
28 March 2011	Presentation	CCC Misconduct Resistance Forum
30 March 2011	FOI Briefing	JLegal conference: FOI Theory v Practice
30 March 2011	FOI Coordinators Workshop	Officers from State and local government agencies
6 April 2011	FOI Briefing	PSC - Induction
13 April 2011	FOI Coordinators Workshop	Officers from State and local government agencies
2 April 2011	Presentation	NOPSA FOI Seminar
4 April 2011	FOI Briefing	PSC - Induction
10 April 2011	FOI Briefing	IPAA Members
11 April 2011	FOI Briefing	Edith Cowan University
13 May 2011	FOI Briefing	Department of Health - Contractors
25 May 2011	Decision-makers Forum	Officers from State and local government agencies
1 June 2011	FOI Briefing	PSC - Induction
16 June 2011	FOI Briefing	Integrity Coordinating Group Forum
22 June 2011	FOI Coordinators Workshop	Officers from State and local government agencies
29 June 2011	Briefing	West Australian Newspapers

Web Site and Electronic Communications

The OIC web site (www.foi.wa.gov.au) contains extensive information about the FOI process. It is structured into sections including: *About FOI* which provides assistance with the objects of the Act including *Frequently Asked Questions (FAQs)*, guides to the *FOI process* and some of the most frequently cited exemption clauses; *Publications* which contains links to the Act and Regulations, annual reports, brochures and articles giving guidance on the FOI process; and *Decisions* which contains copies of all formal decisions made on complaints, including links to appeal decisions of the Supreme Court.

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; by section of the Act; or by catchword. This is a valuable resource for agencies and members of the public who may be researching 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.

The section entitled *Training* contains the latest news and training information available and a facility to register for training courses. The *Miscellaneous* section provides ancillary information, such as OIC contact details and feedback facilities. There are also links to other related web sites.

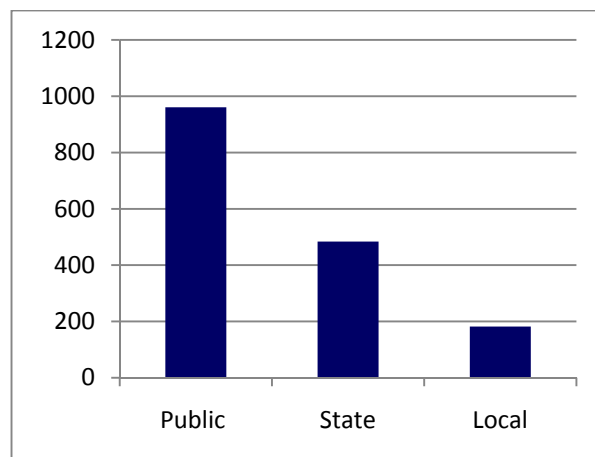
The patronage of the web site remained relatively consistent during the course of the year. There was an average of 12,700 separate visits per month recorded with each visitor, on average, only accessing

two web pages per visit. Visitors were less prevalent in the months of July 2010 and June 2011, perhaps reflecting other priorities for FOI practitioners during those times. However, visitors during those same periods were recorded as having spent a greater amount of time (approximately 13 minutes) per visit compared with an average of approximately 9 minutes per visit over the remainder of the reporting period. Apart from the 'home' page the page most frequented was that describing the FOI process, closely followed by a page outlining the assistance available to applicants, agencies and third parties.

Telephone Enquiries

There were 1,627 telephone enquiries received during the year (1,823 in 2009/10). Over 59% (961) of telephone enquiries received (62% in 2009/10) 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%-484) and local government (11%-182) agencies seeking assistance in dealing with access applications or advice regarding other statutory obligations under the Act.

Figure 1
Telephone Enquiries



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

Fifty seven 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 (13) and the Department of Corrective Services (13).

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 13 shows a summary of applications that were mistakenly directed to the OIC instead of to the agency holding the documents.

Of the remaining written enquiries, 142 were requests for advice concerning applications made under the FOI Act and a further 12 dealt with written advice dealing with other matters.

TABLE 13: MISDIRECTED APPLICATIONS RECEIVED

YEAR	CORRECTIONS	POLICE	OTHERr	TOTAL
2005/2006	22	23	17	62
2006/2007	16	35	40	91
2007/2008	15	24	33	72
2008/2009	15	33	25	73
2009/2010	15	20	30	65
2010/2011	13	13	31	57

2.4 ADMINISTRATION

The 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 WA 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.

The OIC 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 OIC.