



WESTERN AUSTRALIA

Office of the **Information Commissioner**

ANNUAL REPORT

2013/2014

Agency Performance

3. Strategic Plan 2013-16

During 2013/14, the OIC developed a strategic plan to assist the OIC in developing and refining its processes and making decisions on resource allocation to achieve the objects of the FOI Act. The planning process began in 2012/13 and all staff were involved in the development of the plan at a planning day in March 2013. As result, four strategic goals were identified:

Provide a fair, independent and timely external review service

Foster improvement in agency practice

Enhance public awareness of rights to government information

Build the capacity of our people

The strategic and operational initiatives developed for each of these goals are outlined in various sections throughout this report.

4. Resolution of Complaints (External Review)

The Resolution of Complaints (External Review) team provides an independent review and complaint resolution process, with the aim of resolving cases in a timely manner and balancing the competing needs and expectations of applicants, agencies and Parliament within the legislative requirements prescribed by the FOI Act.

As at 30 June 2014, there are 8.4 FTEs assigned to this output (not including the Information Commissioner), comprising of investigations and legal officers, and support staff.

Strategic initiatives

The first of the OIC strategic goals – *provide a fair, independent and timely external review service* – directly relates to the Resolution of Complaints (External Review) function. Three strategic initiatives have been developed to assist in achieving this goal, as follows:

- using appropriate and effective dispute resolution processes;
- promoting consistency of formal decisions; and

- implementing effective case management practices.

These initiatives have been incorporated into the day to day work of OIC with very positive results, as outlined below.

Conciliation conferences

Under sections 70 and 71 of the FOI Act the Commissioner has powers to deal with complaints in a number of ways including by conciliation, negotiation and compulsory conferences. These are in addition to the Commissioner's power to resolve a complaint by issuing a binding determination. It has always been the focus of the OIC to ensure that the conduct of external review proceedings is not unduly legalistic or formal, preferring to negotiate a conciliated outcome between the parties rather than preparing a formal determination.

During the year, a review was conducted of the way external review applications are dealt with. As a result, the external review process was redesigned to draw more heavily on alternative dispute resolution processes by introducing the requirement for parties to attend a conciliation conference in most cases. A pilot project was initiated between December 2013 and April 2014 and a conciliation conference 'blitz' was conducted of approximately 55 pending or unallocated files, whereby parties were required to attend a compulsory conciliation conference before the Principal Legal Officer or another trained conciliator.

In most cases, this intensive activity resulted either in settlement of the complaint, or clarification or narrowing of the

issues in dispute before proceeding to formal external review, thus making the external review process more efficient for those matters that did not settle at conference.

From 1 February 2014 the OIC has formalised this process so that all new external review matters proceed to a compulsory conciliation conference unless there are exceptional circumstances. This allows complainants to be heard and have a chance to put their case directly to the agency and hear the agency's response. It also allows matters to be addressed without undue delay or formality.

The Commissioner personally wrote to all agency CEOs in advance of this change to inform them of the new process. Further information has been published on the OIC's website, including guidance notes for parties attending a conference.

The blitz has reduced the external review backlog and the conciliation conference process is receiving very favourable feedback from the majority of participants.

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Finalising matters where no meaningful response is received from a complainant

Under section 67(1)(b) of the FOI Act the Commissioner may decide not to deal with a complaint or to stop dealing with a complaint in certain circumstances. One of those circumstances is where the complaint is lacking in substance. During the reporting period, the Commissioner decided not to deal with, or to stop dealing with, 15 complaints, of which 13 were considered to be lacking in substance. This is a significant increase from the two matters that were finalised on this basis in the previous reporting period and is a direct result of the review of the external review process where it was determined that it was appropriate to take this course of action in certain circumstances, rather than finalising the matter by formal decision. However, this step is only taken after all parties have had the opportunity to state their case to the Commissioner.

If a complaint is not resolved by conciliation, the Commissioner usually informs the parties of his preliminary view of the complaint, in writing, including his reasons. Each party is given the opportunity to reconsider its position or to provide additional material in support of its view by a specified date. However, in some cases the parties do not respond by the specified date or at all, or only reiterate the same arguments already provided. In the past, the Commissioner has finalised such matters by formal published decision made under section 76 of the FOI Act.

From this year, where the Commissioner is of the preliminary view that an agency's decision is justified and the complainant does not provide any *meaningful* response to the Commissioner's written preliminary view by the specified date, it is likely that he will make a decision under section 67(1)(b) to stop dealing with the complaint on the basis that it is now lacking in substance. In such cases, the complainant is clearly advised in advance that this is the likely outcome if no meaningful response to the preliminary view is subsequently received.

This new approach has been taken to reduce delay in, and decrease the cost of, the external review process. However, the Commissioner will only take the step of closing a file under section 67(1)(b) after he has formed the view that doing so will not result in an unjust or unfair outcome, taking into account all the circumstances of the matter.

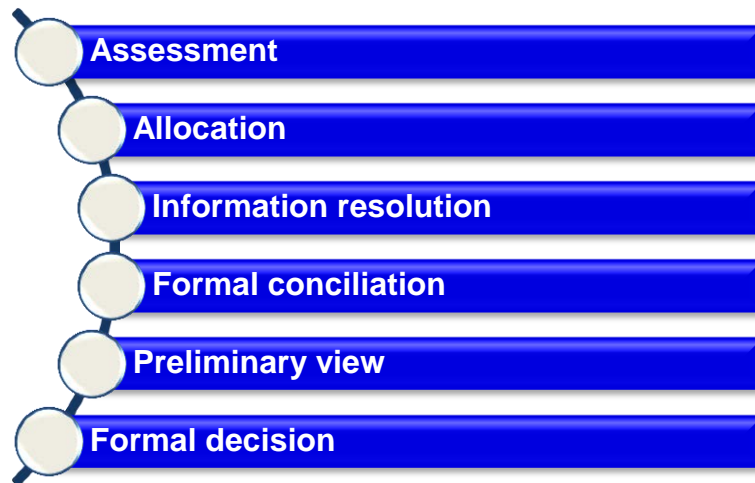
Finalising a complaint in this manner is still regarded as a determination by the Commissioner, and the complainant's right to appeal to the Supreme Court on a point of law still applies. This is expressly pointed out to the complainant when the matter is finalised.

Evaluation of processes, resources and knowledge management

An essential part of streamlining the complaints management process involved a review of current practices and an evaluation of the resources used. This provided a starting point in refining, creating and documenting processes for staff

to follow, improving the way complaints before the Commissioner are handled.

The steps in the external review process can be broadly outlined as follows:



The following additional operational initiatives were carried out during the year.

- An evaluation of legal research tools used by staff was conducted to determine whether they remain appropriate and represented value for money. This resulted in targeted online legal research services replacing paper-based subscriptions.
- A guideline for drafting formal decisions has been documented to improve quality and consistency.

- An internal style guide has been developed, ensuring that publications and outgoing correspondence are consistent.
- As part of the overall review of the OIC's knowledge management system, a focus was put on capturing and utilising precedent letters and text for use in formal advice to parties during the complaints process.

Performance indicators

At the completion of every external review, a post review questionnaire (**PRQ**) is sent to all the parties involved (the agency, the complainant and any third parties). The PRQ asks the following questions:

1. Were you satisfied with the outcome of the external review?
2. Regardless of the outcome, were you satisfied with the manner in which the external review was conducted by the OIC?
3. Do you consider that you were kept adequately informed regarding the progress of the external review?
4. Was the officer assigned to the external review professional in his or her dealings with you?

Respondents are provided a “yes” or “no” tick box, and are also provided the opportunity to make comments for each question.

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Question 2 is used to report OIC's effectiveness in the audited performance indicators, and is detailed in the 'Performance Indicators' section of this report. Questions 1, 3 and 4 are used for internal performance monitoring.

Not surprisingly, the main issue identified in those PRQs which provided comments was the time taken to deal with the complaint. This is understandable, and all parties to the external review process are advised in the first contact that delays can be expected due to the backlog of matters the OIC is dealing with. The main aim of the improvements made to the complaints management process was to reduce the time within which new matters are finalised, and this timeliness measure is showing improvement. A marked decrease in matters on hand during the reporting year is already evident, reducing from 105 matters in July 2013 to 62 matters in June 2014.

Statistics on complaints activity (matters received, completed and on hand) are updated and published monthly on the OIC's website.

Another common theme from the feedback received related to the lack of contact from the OIC between the time the matter was lodged with the OIC and the date it was allocated to a complaints officer. Previous practice (when a new valid external review application is received) involved advising the parties the external review had been received and requesting the agency concerned to provide the disputed documents and its FOI file to the Commissioner. These matters were then kept as 'pending' files until they could be allocated to a

complaints officer to deal with. The regularity of when files could be allocated depended on a variety of factors, the most important being the current workload of complaints officers. While a file was regarded as 'pending', no proactive investigation was undertaken.

As part of the revised complaints management process, the system of allocating new files as pending until the caseloads of complaints staff could handle new matters, has been abolished. All matters are now given an initial assessment on receipt and immediately allocated to a complaints officer. This provides parties with a point of contact for the duration of the external review process. At the start of the reporting year, the OIC had approximately 58 pending files awaiting allocation and the phasing out of this method throughout the year has resulted in no pending files on hand as of 30 June 2014.

5. Advice and Awareness

Achieving the goals of more effective public participation in government and greater public sector accountability through the FOI Act requires the public to be aware of its FOI rights and the public sector to be aware of its FOI obligations.

To this end, the legislative functions of the Information Commissioner under section 63(2) of the FOI Act include ensuring that agencies are aware of their responsibilities under the Act, ensuring members of the public are aware of their FOI rights and assisting agencies and the public on FOI matters. These services are primarily delivered by the Advice and Awareness team through a range of programs.

As at 30 June 2014, 1.8 FTEs are assigned to the Advice and Awareness output. This is a small number, considering the number and size of State and local government agencies in Western Australia.

Two strategic goals have been identified for 2013-16 that relate to the Advice and Awareness function – *foster improvements in agency practice* and *enhance public awareness of rights to government information*. These are to be achieved by focussing on six strategic initiatives:

- Providing clear, accurate, relevant and timely advice to key agency staff to enhance their understanding of their responsibilities under the FOI Act.
- Improving training services to agencies by developing and maintaining up-to-date material with flexible delivery options.
- Providing resources and tools to agencies to assist them in improving their practices.
- Providing an accessible and user-friendly information and education service to the public.
- Evaluating the extent of public awareness of FOI and developing improvement strategies.
- Being responsive to opportunities presented by changes in technology and public expectations of accessibility.

During the reporting year, the OIC has taken a number of steps to improve delivery of its advice and awareness

services in accordance with the strategic goals and initiatives. These have included the development and deployment of an introductory online FOI training course for agencies, the substantial revision of the FOI Coordinators training manual and a thorough review of all of the OIC's publications.

FOI coordinators workshops

The OIC delivers intensive workshops to agencies at no charge. Ten full-day FOI coordinators workshops were delivered for agencies in metropolitan and regional areas during the year. The workshops introduce 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. During the reporting period, this manual was substantially updated to reflect a revised structure based on participant feedback; case references were reviewed and updated; and key messages from the Commissioner were included about encouraging proactive disclosure of information by agencies wherever possible.

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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 FOI applications or requests for internal review. 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 FOI 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 FOI applications. Four decision-makers forums were conducted in 2013/14.

Regional awareness and accessibility program

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. Face-to-face meetings give regional officers the opportunity to raise issues and obtain clarification and advice about the requirements of the FOI Act from the Commissioner and his staff.

As part of the Regional Awareness and Accessibility Program led by the Ombudsman, the OIC visited Broome and Kununurra during the reporting period. As a result, the OIC

has now visited all the major regions of the State over the last five years.

Seminars were held for 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.

The Regional Awareness and Accessibility Program continues into next year with a visit to Kalgoorlie in July 2014.

Performance indicators

The levels of satisfaction with the advice and awareness services offered by the OIC are measured in two ways.

First, feedback forms are provided to participants after each training session or briefing. Second, at the end of each financial year, the OIC sends a survey request to all agencies, which requests statistical data and feedback on the Advice and Awareness function.

Feedback received from course participants and agencies showed a continuing high level of satisfaction with advice and awareness services delivered by OIC. The recently updated manual used during workshops was also widely commented on as being an essential reference tool. Advice and Awareness staff are always available to provide advice and guidance to agency staff when required.

Of all agencies who provided statistical returns to the OIC, 98% were satisfied with the advice and awareness services provided during the year.

6. Administration

The OIC is not part of the Public Service as defined in Part 3 of the *Public Sector Management Act 1994*. However, in order to ensure the highest standards in all administrative activities, the OIC endeavours to comply with public sector standards and other policies set out for the public sector whenever this does not compromise the OIC's ability faithfully to discharge its obligations under the FOI Act.

Code of Conduct and Code of Ethics

The OIC has an established Code of Conduct. The Code is linked to the WA Public Sector Code of Ethics as a general guide to ethical decision-making. Generally, both these guides are complementary to the requirements of the FOI Act, but the FOI Act prevails in the event of any inconsistency.

Records Management

An evaluation of the OIC's recordkeeping policies and procedures was finalised in June 2013 and considered by the Commissioner during the current reporting year. The evaluation reported on the following:

- a review of the OIC's internal "*Procedures Manual for Records Management*";

- an internal audit of the recordkeeping practices of the OIC based on developed performance indicators; and
- areas for improvement in the 2008 Recordkeeping Plan.

Four recommendations were made and approved by the Commissioner as a result of the evaluation:

1. *Consider purchase of records management software.* Due to the small size of the OIC, administrative records are catalogued using Word documents. While this method has significant limitations, it has proven to be effective in the context of the modest amount and complexity of OIC's records. Importantly it has also avoided the cost of a more powerful records management system. However, if the OIC were to increase in size or function, this method would no longer be appropriate, and the recommendation therefore only suggests consideration be made if this were to occur.
2. *Make general updates to the Procedures Manual for Records Management and include a procedure for receipt of vacancy applications.* Some general updates to the manual were required. The recommendation to include a section on the appropriate procedure for receipting vacancy applications stems from the recent decommission of the shared corporate services model.
3. *Create a policy for timeliness of records disposal.* Records disposal has been conducted on an ad-hoc basis, and no regular sentencing of records has been implemented. A

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policy on when and which records are to be disposed of and how they are to be disposed of was required.

4. *Include the retention period on file cover sheets.* This recommendation was made to provide quick and easy identification of retention and disposal times in a proactive manner.

As a result of the recommendations the procedures manual has been updated; a disposal policy created; and file cover sheets updated to include the retention period.

In addition to the records management evaluation, in March 2014 the OIC submitted to the State Records Office a review of its Recordkeeping Plan. The areas identified requiring further work included disaster recovery (including recovery of vital records) and archiving/disposal. Improvements to these areas will be made and reported in the OIC's updated Recordkeeping Plan which will be submitted to the State Records Office by 30 October 2014.

Knowledge management

In 2010 the OIC introduced a knowledge management system and framework in order to capture, develop, share and effectively use the OIC's knowledge resources. During the reporting year, the framework was revised and updated in order to improve the effectiveness and usability of the system and regulate the ongoing maintenance of its content. This will ensure that the new and revised processes resulting from the office's strategic planning initiatives can be appropriately

stored in a shared repository and are available to staff, now and in the future.

Risk management

In 2013/14 the OIC developed a Business Continuity Policy (**the BCP**). The BCP will help to ensure that, in the event of a foreseeable contingency, the OIC's core services are maintained with minimal interruption; major business continuity risks are identified; effective preventative measures are put in place; and responsive recovery strategies are employed. The BCP is supported by a Business Continuity Management Plan which documents the procedures to be used to return the OIC's core services to full operation as soon as possible following any outage. To support both of these initiatives, the OIC's disaster recovery procedures have been updated to ensure that the standard operating environment is returned to normal operation within a reasonable time frame.

Audit

The OIC was selected by the Office of the Auditor General as one of ten agencies to be audited on controls over purchasing cards. The audit was conducted in May 2013 with the results of the audit published in April 2014.

The OIC has accepted and implemented all four recommendations made in the Auditor General's Report to improve purchasing card controls. To this end, the OIC has established a formal purchasing card register for the five purchasing cards held by staff and created a purchasing

cardholder agreement, signed by each cardholder. The purchasing card policy has also been enhanced to:

- require employees to hand their purchasing card to the card administrator before proceeding on any period of leave longer than four weeks;
- require the storage of purchasing cards in a secure location within the office rather than on an employee's person whenever the card is not being used;
- review purchasing card expenditure every 12 months; and
- implement further approvals to purchasing card transactions for the Commissioner and chief finance officer.

In addition to the recommendations made, all purchasing card transactions for each card holder are now proactively published on the OIC's website every month. This allows all credit card expenditure to be scrutinised by the public.

At the end of the financial year, the OIC arranged for an internal audit of its financial and human resource processes. Six recommendations for improvement were made: two with a medium risk impact and six with a low risk impact. The recommendations mainly focussed on segregation of duties, approval processes, management of the MYOB financial software, and review of additional monthly reports.

Segregation of duties and adequate approval processes is a common issue identified throughout OIC's internal audit

history. Due to the small size of the office, one officer is charged with day to day management of the financial and human resource functions for the office. In some instances, this restricts the ability to either segregate duties or allocate approval processes to other staff members, who do not have the required skills or knowledge to effectively carry out that responsibility. Nevertheless, the OIC endeavours to provide accountability and transparency in all financial and human resource processes. To this end, the Commissioner personally reviews all accounts payable (including purchasing card transactions), bank reconciliations, leave reports and trial balances.

Financial matters

As detailed in the financial statements published in this annual report, the main expenditure for the OIC continues to be accommodation and salaries, with the remaining expenditure representing general office running costs. However, salary costs reduced temporarily in 2013/14 in comparison to 2012/13 due to a delay in filling one vacant position and a large reduction in the current annual and long service leave liabilities.

In addition, the OIC's negative equity balance has improved from last year. It had been reported by the Auditor General in his Audit Results Report to Parliament that the OIC's net assets have been in deficit for the past three years. Reasons for this include: the OIC no longer receives regular capital appropriation and has only nine depreciable assets, of which only five have a residual value; since relocating to Albert

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Facey House in early 2012 the OIC no longer owns any office fit-out or telecommunications equipment, as this is now leased from the Department of Finance; and the OIC's sole source of revenue (barring occasional recoups and refunds) is government appropriations.

The improvement in OIC's net assets in 2013/14 can be attributed to both a reduction in leave liabilities and the approval of additional funding for previously unfunded accommodation expenses.

Human resources

The fourth strategic goal - *build the capacity of our people* - focusses on the attraction, management and development of OIC's staff. The following strategic initiatives have been identified to assist in this regard:

- Attracting and retaining the best people.
- Using technology to effectively harness and maintain the value of the office's knowledge base.
- Implementing structured needs-based professional development for staff that includes formal training, mentoring and coaching.

Progress towards accomplishing these initiatives is in the early stages, and will be reported in future annual reports.