



Office of the Information Commissioner

Freedom of information for Western Australia

ANNUAL REPORT 2014/2015

Agency Performance

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 2015, 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

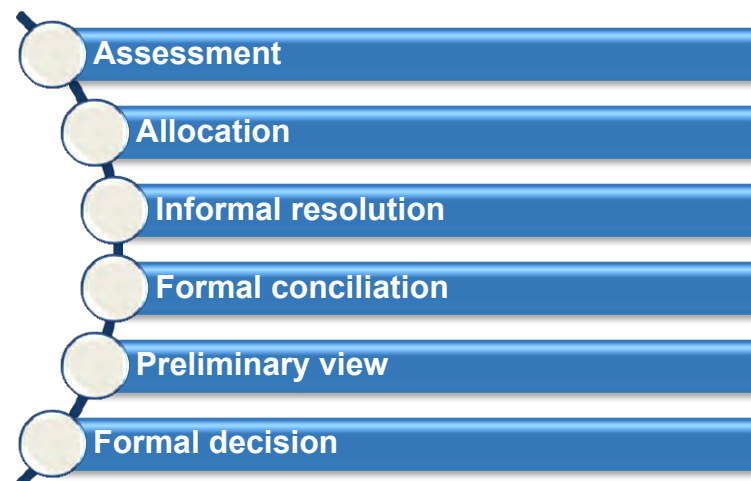
The first of the OIC strategic goals – *provide a fair, independent and timely external review service* – directly relates to the Resolution of Complaints (External Review) function. Three strategic initiatives have been developed to assist in achieving this goal, as follows:

- 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 the OIC with very positive results, as outlined below.

The external review process

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



Conciliation conferences

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.

This process can result 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.

New external review matters generally proceed to a compulsory conciliation conference unless it is considered the circumstances of the matter do not warrant it. Conciliation conferences provide complainants with the opportunity 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.

Finalising matters where no meaningful response is received from a complainant

When a matter has not been resolved by conciliation, after considering all of the material and the disputed documents, the Commissioner may issue the parties with a written preliminary view of the complaint, including reasons. Each party then has the option of reconsidering its position and withdrawing or provide additional material in support of its view.

It was reported last year (at page 6) that, where the Commissioner informs the parties that he is of the preliminary view that an agency's decision is justified and the complainant

does not provide any meaningful response by the specified date, it is likely that the Commissioner 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. This included cases where the complainant did not provide any response by the specified date, as well as where the response merely reiterated the same arguments already provided to the Commissioner, or only made submissions irrelevant to the issues in dispute.

As of November 2014, if a complainant does not respond to the Commissioner's written preliminary view that an agency's decision is entirely justified, the Commissioner may finalise the matter on the basis that it has been resolved by conciliation, rather than closing the file under section 67(1)(b). However, the Commissioner will only take this step if he considers that there are no factors which require the complaint to be kept open in the interests of achieving the objects of the FOI Act. In such cases, the complainant is clearly advised in advance that this will be the outcome if the Commissioner does not receive any response from them by the specified date.

In the view of the Commissioner, this new approach more accurately reflects the intentions of the parties and allows a complainant to agree with the preliminary view and withdraw their complaint without needing to write to the Commissioner.

AGENCY PERFORMANCE

The effect of the new approach to the recorded outcome of complaints has been minimal. There was only a small number of complainants during the year who did not respond to the Commissioner's preliminary view in the circumstances described above.

Performance indicators

At the completion of every external review (regardless of whether a formal decision was issued), a post review questionnaire (**PRQ**) is sent to all the parties involved (the agency, the complainant and any third parties).

Respondents are provided a 'yes' or 'no' tick box to four questions, and are also provided the opportunity to comment.

Question 2 – 'regardless of the outcome, were you satisfied with the manner in which the external review was conducted by the OIC' – 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 and are analysed in this section.

During the reporting year, 272 PRQs were sent to parties. In response, 133 were completed and returned, which is a response rate of 49% (and 77% of those were received from agencies). In addition to the original number of PRQs, 157 reminders were sent. A key focus for 2015/16 will be on improving the response rate from complainants and third parties.

An analysis of the responses to questions 1, 3 and 4 indicate a high satisfaction rate for each aspect of the OIC's performance, and an improvement from 2013/14. This movement is indicated in the following table.

Question	Yes	No	N/A
Were you satisfied with the outcome of the external review?	110 83% (+6%)	19 14% (-1%)	4 3% (-5%)
Do you consider that you were kept adequately informed regarding the progress of the external review?	124 93% (+4%)	8 6% (-4%)	1 1% (+/-0%)
Was the officer assigned to the external review professional in his or her dealings with you?	125 94% (+/-0%)	6 5% (+/-0%)	2 1% (+/-0%)

In last year's annual report, the main issue identified in those PRQs which included comments was the time taken to finalise complaints. A marked reduction in these types of comments was noted this year. The number of external review applications received each year continues to rise, 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 results.

For example, a 'snapshot' comparison of matters that were received *and* finalised within the 2014/15 year and the previous year show:

- in 2013/14, 86 matters were both received and finalised within the year, averaging a total of 104 days active; and
- in 2014/15, 141 matters were both received and finalised within the year, averaging a total of 81 days active.

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

'My faith in the process has been restored. I don't get access to everything I request but I am now confident if I have to seek external review, a genuine attempt will be made to identify what information can be released.'
(feedback from a complainant)

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 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 2015, 1.6 FTEs were 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. However, staff from the External Review and Corporate Services teams also contribute to this function.

Two strategic goals have been identified for the 2013-16 period 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, as follows.

- A project to update and reorganise information published on the OIC website and its other publications and to introduce new communications activities began in early 2015. This follows a publications review completed in 2013/14. Consultation was undertaken with selected FOI Coordinators to obtain feedback about the effectiveness of the OIC's publications.
- In May 2015 the first edition of the OIC's newsletter was published. It is intended that the newsletter will be

published every two months and is sent to existing subscribers of the decision mailing list.

- Work began on the development of a new website, making it more accessible and informative for both agencies and members of the public. The development of the website continues into the next financial year and is expected to be launched later in 2015.
- Drafting of the terms of reference for an Agency FOI Coordinator's Reference Group commenced. The intention of the reference group is to assist the OIC promote good FOI practice and to discuss the needs and experiences of agencies in administering the FOI Act. Invitations to 10 FOI Coordinators from a diverse range of agencies are scheduled for dispatch in early 2015/16.

FOI Coordinators workshops

The OIC delivers intensive workshops to agencies at no charge, and eight 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 and meet staff of the OIC who can

subsequently be contacted should they require assistance when dealing with FOI requests.

A comprehensive manual has been prepared for this workshop. The manual is available for each participant to download prior to attendance and is also available on the OIC website for access by agencies or members of the public.

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 redefine 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. This year, based on feedback from previous forums, that forum program was updated to explain the decision-making process and the requirements of a notice of decision. 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. Five decision-makers forums were conducted in 2014/15. Two of these were specially adapted to deal with the particular issues faced by decision-makers in specific agencies.

Regional awareness

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.

It is appreciated that Perth-based training may be restrictive to some regional agencies due to travel time and costs. The OIC endeavours to ensure regional agencies are not disadvantaged in this regard. However, the same limitations exist for OIC staff in terms of visiting regional areas, and the method for each regional training request is therefore considered on a case by case basis.

The OIC is looking into alternative methods to providing regional training without the need for costly travel. For example, during the year training was conducted by video conferencing to the Goldfields and the Pilbara. Other methods that are being considered for future application include a comprehensive online training facility and using internet-based communication tools, such as Skype.

In the meantime, wherever possible the OIC will continue to participate in proactive programs designed to reach agencies and the community in the regions, such as the Regional Awareness and Accessibility Program coordinated by the WA Ombudsman's Office.

Visit to Information Commissioner's Office, United Kingdom

In July 2014 the Principal Legal Officer was invited – while on a privately funded holiday to the United Kingdom – to visit the Information Commissioner's Office (ICO) at Wilmslow near Manchester.

She gave a presentation to the staff about the role and functions of the OIC in Western Australia, recent trends and cases of interest. The presentation was also broadcast by video link to the ICO's Northern Ireland office and was followed by a lively question and answer session.

Briefing sessions with key senior policy and appeals staff as well as the Deputy Commissioner Information and the Information Commissioner also took place during the two day visit, and gave valuable insights into the ICO's approach and recent developments. The OIC appreciates the ICO making this opportunity available to its senior staff member.

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 requesting 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 the 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. Corporate services

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 is committed to complying with public sector standards and other policies set out for the public sector whenever this does not compromise the OIC's ability to faithfully 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

The OIC's Recordkeeping Plan (RKP 2014032) (**the RKP**) and Retention and Disposal Schedule (RD 2008021) (**the R&D Schedule**) were reviewed during the reporting year. The amended RKP was approved by the State Records Commission (**the SRC**) in December 2014. Areas identified for improvement included disaster recovery (including recovery of vital records) and archiving/disposal.

The disposal decisions in the R&D Schedule remain suitable for the OIC's requirements and no amendments were required.

Note: As the Information Commissioner is also a State Records Commissioner, conflict of interest protocols were observed during the SRC's meeting when considering the OIC's RKP and R&D Schedule.

Disability Access and Inclusion

In July 2014 the OIC lodged its Disability Access and Inclusion Plan (**the Plan**) to the Disability Services Commission, and received approval from the Director General in August 2014. Advice on the approval and publication of the Plan was published in the public notices section of *The West Australian* newspaper on 3 September 2014. The *PS News* also reported on the Plan in an article on 2 September 2014.

The OIC is committed to ensuring that people with disability, their families and carers are able to fully access the range of services and facilities of the office. The OIC will, whenever

required, consult with people with disability, their families and carers and disability organisations to ensure that barriers to access and inclusion are addressed appropriately.

The Plan is available on the OIC's website, or copies can be requested from this office.

Knowledge management

The OIC's knowledge management system and framework aims to capture, develop, share and effectively use the OIC's knowledge resources. In 2013/14, 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 to 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.

Finalisation and review of the updated framework planned for 2014/15 was delayed due to other priorities and unavailability of key staff, and has been postponed until 2015/16. This initiative remains an important step towards achieving one of the OIC's strategic initiatives – to 'use technology to effectively harness and maintain the value of the office's knowledge base' – that forms part of the strategic goal of 'building the capacity of our people'.

Risk management

The OIC has in place a Business Continuity Plan (**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 ensure that the standard operating environment can be returned to normal operation within a reasonable time frame.

Audit

Internal

In February 2014, an internal audit of the OIC's finance and HR systems, fixed assets and gift decision registers were conducted by Braxford Consultancy. Four medium to low risk recommendations for improvement were made in respect of a minor transaction discrepancy; finalisation of the finance manual; completion of a leave issue; and clarification in respect of quarterly reporting requirements.

In addition, the OIC and its internal auditors developed a three year strategic internal audit plan, to begin in 2015/16. Past years' internal audits have traditionally focussed on financial and human resource compliance and the strategic audit plan

aims to improve the OIC's overall operations by evaluating and improving the effectiveness of risk management, controls and governance processes.

External

In agreement with the Office of the Auditor General, the OIC's external audits for 2013/14 and 2014/15 have been scheduled to commence as early as possible following the end of each financial year. The audits have been conducted in two stages – the financials are audited before the end of July and the performance indicators are completed in August/September. This allows end of financial year data which OIC requests from agencies (due by the end of July) to be properly collated and reviewed before relevant data is used in the performance indicators.

This approach has worked well and the OIC has been named a best practice agency in the small agencies category in the Auditor General's Audit Results Report for the past two years. The ability to provide the first draft of financial statements in such a short period is significantly enhanced by the assistance provided by our external financial service providers.

Financial matters

As detailed in the financial statements found further 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.

OIC's financial position

The OIC's equity balance has improved from last year and is now at a surplus. For the past four years, the Auditor General reported in his Audit Results Report to Parliament that the OIC's net assets have been in deficit. 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 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 the OIC's net assets in 2014/15 can be attributed to the increase in cash assets.

Explanatory statements

Standard 1055 issued by the Australian Accounting Standards Board requires agencies to provide explanatory statements in the audited financial statement notes, outlining variances between budgeted and actual results, and actuals between the current and preceding year. Thresholds for this requirement are outlined in Treasurer's Instruction 945, and by virtue of TI 945(1)(v), the OIC's total cost of services comes under the threshold (\$3 million). Therefore, no explanatory statements are included in the financial statements.

Human resources

Staff movements

Fourteen employees were on staff as of 30 June 2015. Staff turnover has always been infrequent (and in some years, non-existent). In fact, seven current staff members have been with the OIC for over 15 years, and three of those for over 20 years.

In 2014/15, two new staff members were recruited following the creation of two new positions, both for six month contracts, as follows.

- A Communications Officer position was created for the specific project of developing and implementing a communications framework for the OIC. The limited number of *Advice and Awareness* staff meant no existing resources were available to dedicate to this initiative.
- A Paralegal position was created to support the *Review and Complaints* team in providing administrative support and conducting legal research and analysis. This has allowed investigations and legal officers more time to focus on the core work required to deal with external review applications.

A review of the impact of the Paralegal position will be conducted at the conclusion of the six month contract to determine the benefit of extension and/or permanency. Consideration must also be given to the availability of funds in the salaries budget. Both new positions were able to be filled

during the year due to an extended secondment of a senior officer from the OIC to the State Solicitor's Office.

Staff management

The OIC acknowledges that, due to the small size of the office, there is limited opportunity for promotion. In order to maintain skills development, acting opportunities are offered to staff wherever possible and external professional development opportunities encouraged.

The OIC has five legal officers who are required to maintain a Continuing Professional Development Plan (**CPD Plan**), by virtue of the *Legal Profession Rules 2009*. In May 2015 the OIC's Continuing Professional Development Arrangement was updated and demonstrates the OIC's commitment to ensuring its legal officers participate in professional development activities for the next three years.

The limitation of managing staff in a small office is an issue that has been included in the Strategic Audit Plan, and an overall audit on personnel risks is scheduled for 2015/16.

Healthy workplace

- One of the benefits of a small office is the close-knit environment. The OIC maximises this through the long standing establishment of the OIC Social Club. Social events are organised throughout the year to unwind and strengthen relationships. These are funded by voluntary staff subscriptions.

- In October 2014, six OIC staff joined Lawyers for a Cause to raise funds for the Chief Justice's Youth Appeal by walking, running, or cycling around the Swan River. The event was organised by the Law Society of WA and in total raised over \$16,000 for projects, including youth at risk.
- The OIC became a signatory to the Psychological Wellbeing Best Practice Guidelines for the Legal Profession developed by the Tristan Jepson Memorial Foundation. The Foundation is an independent, volunteer, charitable organisation whose objective is to decrease work-related psychological ill-health in the legal community and promote workplace psychological health and safety. Given the high number of legal staff in the OIC it was considered appropriate that the OIC support and follow the guidelines as a whole whilst not restricting them to just the legal officers. More information on the guidelines can be obtained from www.tjmf.org.au.
- The OIC registered with the Australian Defence Force as a Supportive Employer of Reservists and is committed to supporting any employee that requires Defence Force Reserves Leave under the *Public Service Award 1992*.