Office of the
Information Commissioner

Freedom of information for Western Australia

ANNUAL REPORT

2014/2015

Significant Issues and Trends

7. Recommended legislative and administrative changes

Section 111(4) of the FOI Act requires the Information Commissioner to include in the annual report any recommendations as to legislative or administrative changes that could be made to help the objects of the FOI Act to be achieved. The following recommendations have also been drawn to the attention of the Community Development and Justice Standing Committee.

Consultation with officers of government agencies

Section 32 of the FOI Act presently requires an agency not to give access to a document containing personal information about a third party unless the agency has taken such steps as are reasonably practicable to obtain the views of that third party as to whether the document contains matter that is exempt personal information under clause 3 of Schedule 1.

Third parties may include officers of government agencies. Certain 'prescribed details' about those officers, such as their names, positions and things done in the course of their duties, are not exempt under clause 3. However, section 32 requires agencies to consult with officers of government agencies, even when the personal information about them amounts to prescribed details and is not exempt. This is often time consuming without adding to achieving the objects of the FOI Act.

As recommended in previous annual reports to Parliament, the Commissioner recommends the amendment of section 32 to remove the requirement to consult an officer of an agency in respect of the disclosure of personal information about them that consists of prescribed details only. Such an amendment would not prevent an agency from seeking the views of officers where it would still be prudent to do so, for example where the agency considers that disclosure of information to an access applicant may endanger the safety of an officer of an agency.

Outdated references to intellectually handicapped persons and closest relative

Sections 23(5), 32(4) and 98 of the FOI Act refer to 'intellectually handicapped persons'. For consistency with other legislation and in keeping with good practice, this should be replaced by a more appropriate term such as 'persons with intellectual disability'.

Sections 32, 45 and 98(b) currently use the term 'closest relative' which is inconsistent with the term 'nearest relative' in section 3 of the *Guardianship and Administration Act 1990*. This sometimes causes difficulties for agencies in identifying the closest relative for the purposes of the FOI Act and should be amended to 'nearest relative', as defined in the *Guardianship and Administration Act 1990*, for consistency and to remove ambiguity.

Appointment of staff by the Information Commissioner

Under section 61(1) of the FOI Act, all OIC staff – other than those seconded from other State government agencies – are appointed by the Governor in Executive Council on the recommendation of the Commissioner. This can result in a delay of up to a month in making an offer of employment to a preferred candidate after the selection process has concluded. It also adds to the workload of Cabinet and Executive Council.

The Commissioner recommends an amendment to section 61(1) to allow the Commissioner to appoint staff directly.

8. Decisions of Interest

During the reporting period the Information Commissioner published 24 decisions. The following section outlines some of those decisions which may be of particular interest.

Proving that disclosure would prejudice the future supply of information to Government

Re Greg Rowe Pty Ltd and City of Swan [2014] WAICmr 15

The document in dispute in this matter was an Operational Management Plan submitted by a third party to the agency as a condition of a retrospective building approval granted by the agency. The agency consulted with the third party as the document contained commercial information, and the third party objected to its disclosure.

The third party was required to prepare the Operational Management Plan for submission to the agency as a result of a building dispute between the third party and the agency. The agency decided to grant retrospective approval for the buildings constructed by the third party without building approval on the condition that they submit the Operational Management Plan.

The Commissioner's decision considered the third party's claim that the document was exempt as disclosure of the information would prejudice the future supply of that type of information to Government in the future.

The Commissioner noted that potential future applicants seeking building approvals from the agency will continue to submit the necessary documents to support their applications, where they feel it is in their commercial interest to do so. The argument that persons or bodies would 'hold back' information in the planning approval process if there was a possibility that the document may subsequently be disclosed under FOI – thereby diminishing any commercial opportunities – was not made out.

Requirement for applicants to cooperate in reducing the scope of access applications

Re Park and SMHS – Royal Perth Hospital [2014] WAICmr 18

The complainant applied to the agency for access to certain documents relating to both her medical treatment and a complaint made by the complainant's husband against the agency. The agency provided the complainant with full

access to five volumes of her medical record and five disks containing scan images. The complainant sent the documents to a relative in the USA and asked the agency for another complete set of documents, which the agency provided to the complainant.

Three hundred documents relating to the complaint against the agency were also identified. The agency refused to deal with that part of the complainant's access application as the work required to deal with the application would divert a substantial and unreasonable portion of the agency's resources away from its other operations. However, before settling on this course, the FOI Act requires that the agency take reasonable steps to help the applicant change the application to reduce the amount of work needed to deal with it.

To that end, the agency held several long meetings with the complainant's husband in an attempt to narrow the scope of the access application, but the complainant was not willing to negotiate with the agency.

The Commissioner considered that, while agencies have a duty to assist applicants in reducing the scope of large applications, there must be a corresponding obligation upon applicants to work cooperatively with an agency. An element of reasonableness must be implied into the process if the legislation is to work satisfactorily.

The agency deals with more than 2,300 access applications each year, with 255 outstanding and approximately 150 files waiting to be copied by the agency's sole FOI Coordinator. Accordingly, the Commissioner found that the work involved in dealing with the second part of the complainant's application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, and confirmed the agency's decision.

Dispute over estimate of charges

Re Kelly and Department of Fisheries [2014] WAICmr 19

The documents in dispute in this matter relate to shark attacks in Western Australia and any proposed plans by the Government to mitigate shark attacks against humans.

Before dealing with the access application and making a decision on access, the agency gave the complainant notice of its decision to require the payment of a $405.50 deposit – 25% of the total estimated charges calculated at $1,622.00. The agency also invited the complainant to further reduce the scope of the access application in order to reduce the amount of the charges that may be imposed. The complainant had already negotiated a reduced scope with the agency, and did not accept the estimate of charges.

After considering the number and approximate size and nature of the documents identified (108 documents in total), the Commissioner was of the view that a reasonable estimate of the time that it should take an officer having the appropriate competence, skills and knowledge to deal with the complainant's access application was eight hours, rather than 46 hours as calculated by the agency. That included six

hours to examine the documents instead of 26.5 hours as claimed by the agency, and one hour to photocopy the documents instead of four hours as claimed by the agency.

This reduced the estimate of charges to $240.00, plus $100 for photocopies. The deposit which the agency may require the complainant to pay on account of the charges for dealing with the access application was therefore $85.

In his decision, the Commissioner reminded the parties that the estimate of $340.00 was only an estimate and that, if the actual time taken by the agency to deal with the access application exceeded that estimate, or is less than the estimate, the final charge to be imposed may be adjusted accordingly.

Access to high school student test paper questions

Re 'H' and Department of Education [2014] WAICmr 21

The documents in dispute in this matter were test questions in a year 9 chemistry test completed by the complainant's child. The agency refused access to the disputed information on the basis that disclosure could reasonably be expected to impair the effectiveness of future chemistry tests administered by the school in question.

The Commissioner agreed that disclosure of the disputed information would allow students to study selectively and to anticipate the questions that would be asked in a test. As a result, the effective use of the test as an indication of a student's knowledge – and the application of that knowledge in a test environment – could reasonably be expected to be damaged. Schools would need to rewrite the tests each year to negate this damage, and the Commissioner agreed that doing so would be significantly time consuming and costly.

In addition, giving some students an advantage by disclosing the disputed information may be damaging to the integrity of test results and could encourage parents and others to challenge each question and the marking of each question in each test, thus detracting from the finality of the marking procedure. The Commissioner was satisfied that disclosure of the disputed information could reasonably be expected to impair the effectiveness of the methods or procedures for conducting tests.

The Commissioner then considered whether it was in the public interest to disclose the documents. The Commissioner accepted that it is in the public interest for parents to have a contribution to students' learning. The school in this matter has met this public interest by meeting with the complainant's wife and the science teacher, and offering to meet with the complainant, to discuss academic issues. The Commissioner did not consider that the complainant had established that there is a public interest in parents also being able to debate the content of each test and the teachers' marking of each individual test. In particular, the complainant had not shown that the quality of the tests was such that parental debate – of the kind contemplated by the complainant – would improve the quality of the tests or their marking and thus add to a student's education.

In addition, the Commissioner considered that it would not be in the public interest for the complainant to subject exam questions to 'informal collateral disagreement', undermining the finality of the assessment and review process.

Are RSPCA general inspectors 'officers of an agency'?

Re 'I' and Department of Agriculture and Food [2014] WAICmr 22

The disputed information in this matter was contained in documents involving the role of the RSPCA in removing animals from the care of the access applicant. A third party – a general inspector employed by RSPCA under the *Animal Welfare Act 2002* – was consulted by the agency as the agency decided to grant access to the prescribed details of the third party. That is, the third party's name; title as a general inspector; and other information relating to the complainant's role as a general inspector, including the third party's role in removing animals from the care of the access applicant.

The third party did not agree that a RSPCA general inspector is an officer of an agency under the FOI Act and sought external review of the decision to grant access to the disputed information, claiming it was personal information and exempt from disclosure.

The Commissioner found that a general inspector under the *Animal Welfare Act 2002* was, in fact, an 'officer of an agency', as that term is defined in FOI Act. The Commissioner was satisfied that disclosure of the disputed information would do no more than reveal prescribed details about a person who is an officer of an agency and was not exempt.

The Commissioner also noted the strong public interest in the transparency and accountability of government agencies that carry out functions on behalf of the community and considered there was a public interest in the disputed information being disclosed.

Would access to assessments of pastoral leases adversely affect the commercial and business affairs of the pastoral lessees?

Re Tallentire and Department of Agriculture and Food and Others [2015] WAICmr 2

The documents in dispute in this matter consisted of a report on the biophysical viability rating assigned to pastoral leases. That is, an assessment into the ability of Crown land subject to long-term pastoral leases to produce forage for livestock.

Both the agency and a number of third parties (being pastoral lessees) claimed that the documents were exempt as disclosure would have an adverse effect on the business affairs of the pastoral lessees because, if made public, they would result in financial lenders reconsidering their valuation of the pastoral leases for finance or purchase, as the pastoral lessees claim the report is inaccurate, out of date and misleading. In addition, disclosure of the documents may cause future information required to be provided to the Government to be 'restricted'. Further, the names of pastoral

lessees were exempt as they were claimed to be personal information.

All pastoral leases were due to expire on 30 June 2015 and the pastoral lessees would be required to enter into negotiations with their financiers in respect of renewing those leases. The Commissioner was not persuaded by the submissions made by the agency or the pastoral lessees that disclosure of the disputed information would adversely affect those financial negotiations (and therefore the business affairs of the pastoral lessees) as, among other reasons, a financial institution employing due diligence when considering financing a pastoral business is likely to already be aware of potential issues relating to the viability of any pastoral lease, and a biophysical viability rating would only be part of the information that a financial institution may consider when assessing the viability of the pastoral business.

In respect of the claims made by the pastoral lessees that the report was inaccurate, out of date and misleading, while the Commissioner considered it was not his role to consider the validity of the analysis in the report, it was open to the third parties to discuss that aspect with their financiers during their negotiations.

The Commissioner also did not accept that disclosure of the disputed information could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency. The disputed information was partly derived from information provided in Annual Returns completed by the pastoral lessees in accordance with provisions of the *Land Administration Act 1997*. The Commissioner was of the view that, where supply of information is a statutory requirement and a condition attached to the granting of a pastoral lease, it is difficult to demonstrate that an agency's ability in the future to obtain such information could reasonably be expected to be prejudiced.

The Commissioner also considered that the public interest in the public being informed about the condition of lands subject to pastoral leases – which are a public resource – was stronger than the public interest afforded to the individual pastoral lessees in maintaining the confidentiality of their business affairs, or their personal information. The Commissioner also considered that the accountability of State Government agencies or bodies responsible for ensuring appropriate management of pastoral leases was a factor in favour of disclosure of the disputed information.

Documents relating to an inquiry into the conduct of a ministerial officer

Re McGowan and Department of the Premier and Cabinet [2015] WAICmr 3

The documents in dispute in this matter relate to an inquiry into the conduct of a ministerial officer. The agency claimed the documents were exempt as public servants' willingness to co-operate with inquiries in the future would be substantially compromised if the documents were disclosed, and could have an adverse effect on the agency's management or

assessment of its personnel. The agency also claimed that some of the information was exempt personal information.

The Commissioner found that the personal information in the documents consisted of prescribed details about officers of an agency and was not exempt. In addition, there was evidence that a number of the third parties had consented to disclosure of edited copies of the documents.

The Commissioner considered that the agency's claim that public officers would be reluctant to provide information in the future was not substantiated as it was inconsistent with the standards and values contained in the public sector code of ethics and code of conduct that applies to officers in such positions.

Further, the Commissioner did not consider that the claim that a substantial adverse effect on the agency's management or assessment of its personnel was made out. In making this claim the agency must do more than simply assert that a set of events is likely to come to pass if the documents are disclosed – probative evidence must be provided to support the claim. The Commissioner considered that the concerns expressed by the agency fall into the category of the sorts of matters which very senior public servants in a central government agency are expected to address as part of their leadership and management responsibilities.

The Commissioner also considered that as the documents concerned the actions of current or former senior public officers in influential positions, the public interest in ensuring that such investigations are conducted fairly, robustly and with integrity would be furthered by disclosure of the documents in this case.

The commercial value of survey data

Re Scriven and Rottnest Island Authority [2015] WAICmr 5

The disputed information in this matter consisted of raw survey data that included numerous questions and answers to those survey questions by respondents. The survey was conducted, in part, to research the needs of visitors to Rottnest Island and to identify strategies that would stimulate more visits to Rottnest Island.

The agency contended that disclosure of the disputed information would allow its competitors to use the information for their own commercial gain, destroying its commercial value to the agency. The survey was conducted for the purpose of producing a range of strategic documents to give the agency a commercial competitive advantage over other tourist destinations, including the agency's direct competitors on Rottnest Island.

The agency also submitted that it was not in the public interest to disclose the disputed information because the adverse financial effect from the loss of the commercial value of the disputed information would result in additional costs falling on the Western Australian Government and, consequently, the community.

The Commissioner determined that the agency had not established that the survey data was important or essential to the profitability or viability of the agency's business operations or any pending commercial transactions. In doing so, the Commissioner recognised the agency's broad statutory powers to determine the proposed use of tourist services and facilities on Rottnest Island, to the exclusion of other competitors.

In addition, the Commissioner considered that there were persuasive arguments that it would be in the public interest for the documents to be disclosed. The Commissioner found there is a strong public interest in State and local government agencies being accountable for decisions made concerning the management and development of the State's resources.

Access to State Agreements

Re Murphy and Department of State Development [2015] WAICmr 4

Re Latro Lawyers and Department of State Development [2015] WAICmr 7

Both these matters involved documents concerning State Agreements. *Re Murphy* related to numerous State Agreements dating from 1971 to 1993 and in *Re Latro Lawyers*, the Canning Basin Pipeline Project and the *Natural Gas (Canning Basin Joint Venture) Agreement Bill 2012.* In both matters, the agency maintained that the disputed documents were exempt, claiming a variety of exemptions.

The onus is on agencies to provide the Commissioner with probative evidence to support their claims that documents are exempt and should not be disclosed. It is not sufficient to assert that the documents are exempt and would have an adverse effect if they were disclosed. Except for some disputed information in *Re Latro Lawyers*, the Commissioner did not consider that the agency provided adequate evidence to substantiate its claims that the documents were exempt.

The Commissioner was not persuaded that disclosure of the disputed documents could reasonably be expected to prejudice the future supply of information to the Government, as the agency claimed. The Commissioner considered that business is well aware that engaging with government, particularly on major infrastructure projects, necessarily attracts a greater level of scrutiny and public interest than would be the case in a purely private commercial venture.

In *Re Murphy* the Commissioner also observed that the disputed documents were considerably aged and did not consider that the agency had established how disclosure of events dating back so long could reasonably be expected to have the adverse outcomes alleged by the agency.

In *Re Latro Lawyers*, a significant amount of material concerning the project was already in the public domain and the Commissioner was not persuaded that business would be reluctant to deal with the State in the future if the documents were disclosed.

The agency deals with large infrastructure projects of significance to the State and private organisations frequently engage with the State government through the agency, in pursuance of such projects, presumably with a view to achieving some mutual benefit. There was no evidence before the Commissioner that business would be reluctant to deal with the State in the future if documents such as those requested in these two matters were disclosed.

Documents created during a pre-election caretaker period

Re West Australian Newspapers Limited and Department of the Premier and Cabinet [2015] WAICmr 9

The complainant applied to the agency for correspondence to and from the Premier and his ministerial staff relating to the MAX Light Rail or the Forrestfield-Airport Link. The date range of the requested documents included the caretaker period before the 2013 State election. The issue in question in this matter was whether documents created in Ministers' offices during the caretaker period before the 2013 State election were documents of an agency.

The agency refused access to the documents, claiming that the documents related to the party political role of the Minister (or Premier) rather than the affairs of any government agency. Documents held by a Minister are not accessible under the FOI Act if they do not relate to the affairs of another agency (not being another Minister).

The Commissioner concluded that the disputed documents *did* relate to the affairs of another agency (not being another Minister) and found that they were documents of an agency under the FOI Act. The Commissioner did not accept that documents produced during the caretaker period are necessarily of a different character than those produced during other times in the electoral cycle and was not persuaded that the application of the Caretaker Conventions resulted in the documents failing to be documents of an agency in this particular case.

The Commissioner also noted that the Office of the Premier is not to be regarded as a separate agency for the purposes of the FOI Act. As a result, the Commissioner considered it was arguable that the disputed documents are documents of the Department of the Premier and Cabinet.

9. FOI 'snapshots'

The following are some notable issues that have been identified by the OIC during the year.

CCTV footage

As noted in the draft Western Australian State CCTV Strategy released by the Government for public comment earlier this year (available on the WA Police website), the use of CCTV has increasingly featured in the community as a safety and crime prevention tool. There are many government agencies in Western Australia that operate CCTV for a range of purposes.

CCTV footage held by State and local government agencies is potentially accessible under the FOI Act. Whether CCTV

footage is accessible to an access applicant in any particular case will usually turn on whether any of the exemptions in Schedule 1 to the FOI Act apply. For example, footage may be exempt if its disclosure could prejudice an investigation or reveal personal information about individuals without demonstrable public benefit.

This year the Commissioner has received a number of complaints relating to decisions made by agencies to refuse access to CCTV footage requested under the FOI Act, which involve a number of complex issues that have not been previously dealt with. The Commissioner anticipates further ongoing demand for access to CCTV footage from agencies and is currently of the view that, wherever possible, the issue of access to CCTV footage is best dealt with outside of the access provisions of the FOI Act. This allows agencies and access applicants greater flexibility to negotiate an outcome which meets the needs of both parties while protecting the privacy of members of the public. For example, the applicant may be satisfied with viewing selected parts of the relevant footage while being supervised by an agency officer who can give useful contextual information to the applicant about how the footage was recorded and what action was taken as a result.

The Commissioner encourages agencies to develop well-considered policies, procedures, standards and other documentation relating to the collection, use, custodianship, disclosure and destruction of CCTV footage. These must comply with agencies' obligations under the *State Records Act 2000* and should be consistent with the objects outlined in section 3 of the FOI Act which focus on greater public participation and government accountability. Such policies and procedures should outline how the agency deals with requests from individuals for footage that include their own images and requests from applicants for footage that contain the images of other people.

Some access applicants have argued that people give up their right to privacy by catching public transport or entering public spaces where CCTV cameras operate overtly. I disagree and consider that each case must be decided on its merits.

Agency decision making: The stark contrast between good practice and poor practice

The objects of the FOI Act are to enable the public to participate more effectively in governing the State and to make the persons and bodies that are responsible for State and local government more accountable to the public, and it is important for agencies to act in a way that furthers these objectives. How well an agency discharges its obligations under the Act will be a major factor in whether those objects are achieved.

Agencies are to give effect to the FOI Act in a way that:

- assists the public to obtain access to documents;
- allows access to documents to be obtained promptly and at the lowest reasonable cost; and

- assists the public to ensure that personal information contained in documents is accurate, complete, up to date and not misleading.

A number of matters that came before the Commissioner during the year highlight the difference between good practice and poor practice. The practices and procedures that remain of concern to the Commissioner include:

- an apparent reluctance by some agencies to engage in meaningful discussions with access applicants;
- delays in processing access applications due to additional deliberative layers adopted by agencies which are not required by the FOI Act;
- a reliance on claiming technical exemptions where no apparent harm would result from disclosure; and
- poorly prepared notices of decision that do not satisfy an agency's obligation to justify a decision to refuse access to requested documents.

By way of contrast, the following case studies describe what can be achieved when agencies deal with access applicants in a non-adversarial manner and in a spirit consistent with the objects of the FOI Act.

Case study 1 – Finding a win-win outcome

A major media organisation made an access application to an agency that related to a sensitive topic that was the subject of significant public debate and numerous government inquiries over an extended period of time. The terms of the application were broad and had the potential to involve a large number of documents containing sensitive personal information about third parties.

Before proceeding to deal with the application, the FOI Coordinator from the agency personally telephoned the applicant and outlined the kinds of documents that might exist that would fall within the scope of the application.

As a result of the initial discussions, the scope of the access application was significantly reduced. Instead of seeking access to individual documents relating to each third party, the applicant agreed to accept the agency's proposal to prepare and provide a de-identified summary document, which the agency would create based on the numerous documents initially identified by the agency.

In its decision, the agency gave the applicant access to the newly created summary document as agreed between the parties and also gave access to an edited copy of one further document, which it claimed was the only document that fell within the scope of the remaining part of the application.

The applicant was satisfied with the access provided to the documents considered by the agency in its notice of decision but was of the view that additional documents should exist and sought review of that part of the application.

On external review, the Commissioner was of the view that the agency had taken a narrow interpretation of the scope and, therefore, had not made searches and inquiries for other

kinds of documents that would fall within the scope. The agency acknowledged and accepted that view and agreed to conduct additional searches and inquiries which found nine additional documents. The agency immediately gave the applicant access to an edited copy of each of those documents. This satisfied the applicant and the matter was closed.

Given the sensitive nature of the subject and the amount of media interest, this matter could easily have resulted in a long and drawn-out dispute, with the parties focusing on scoring tactical victories during the external review process. However, thanks to the parties' willingness to participate in the FOI process in a professional, courteous and timely manner, the issues were resolved quickly and to the satisfaction of both parties.

A number of matters that came before the Commissioner during the year highlight the difference between good practice and poor practice.

Case study 2 – Fully explaining the reasons for a decision

A former employee of an agency made a complaint to another agency (**the review agency**) about the environmental health of her workplace. The review agency conducted an investigation and informed the applicant of the outcome. However, the applicant wanted further information and made an access application to the review agency for documents relating to the investigation, including personal information about her former colleagues.

When dealing with the application, the review agency provided access to a substantial amount of relevant information. It provided the applicant with access to an edited copy of all documents found within the scope of the application, deleting only personal information about third parties. The applicant wanted access to full unedited copies of the documents that included the personal information about the third parties.

The agency provided a detailed and well explained internal review notice of decision that described the relevant requirements of the FOI Act and why the decision was made. The applicant then exercised her external review rights to the Commissioner.

Following receipt of submissions from the parties, the Commissioner required the parties to attend a confidential conciliation conference. At the conciliation conference both parties attended with a view to participating fully and resolving the complaint in good faith.

The details of the conciliation conference remain confidential. However, as a result of the cooperative approaches of both parties, the dispute was able to be resolved during the conference in a timely and efficient manner. This can be attributed to both the active participation of the agency and the applicant in the conciliation process, and because the review agency provided the applicant with significant access to the requested documents and a detailed explanation as to why the remaining information about third parties would not be disclosed.

10. Supreme Court appeals

This year, five decisions of the Commissioner were the subject of an appeal to the Supreme Court.

Two appeals, arising from the Commissioner's decisions in *Re 'I' and Department of Agriculture and Food* [2014] WAICmr 22 and *Re Latro Lawyers and Department of State Development* [2015] WAICmr 7, have not been heard before the Court as at the end of the reporting period.

One appeal arising from the Commissioner's decision in *Re 'H' and Department of Education* [2014] WAICmr 2 was heard on 2 June 2015. However, as at the end of the reporting period the Court has not delivered its judgment.

In one matter, an appeal was lodged by the complainant arising from the Commissioner's decision to stop dealing with her complaint under section 67(1)(b) of the FOI Act on the ground that the complaint was lacking in substance (note: decisions of this type are not publised).

Justice McKechnie dismissed the appeal on 21 November 2014 and the complainant then filed an appeal with the Court of Appeal against that decision. The complainant subsequently filed a notice of discontinuance of appeal but then applied to withdraw that notice. In *H v The Information Commissioner WA* [2015] WASCA 142, the Court of Appeal, per Justice Newnes and Justice Murphy, concluded that the appeal had no reasonable prospect of succeeding and dismissed the application.

The final appeal was lodged by the Department of the Premier and Cabinet arising from the Commissioner's decision in *Re West Australian Newspapers Limited and Department of the Premier and Cabinet* [2015] WAICmr 9. On 23 June 2015 final orders were made by his Honour Chief Justice Martin upon consent of the agency and the complainant. Those orders set aside the Commissioner's decision that the disputed documents are documents of the Premier and ordered that the disputed documents are instead documents of the Department of the Premier and Cabinet for the purposes of clause 4(1) of the Glossary to the FOI Act. The practical effect remained that the documents were to be disclosed to the applicant under the FOI Act.

11. Report on agency statistics

Section 111 of the FOI Act requires that the Commissioner's annual report to the Parliament is to include certain specified information relating to the number and nature of applications dealt with by agencies under the FOI Act during the year. To enable that to occur, agencies are required to provide the Commissioner with the specified information. That information for 2014/15 is set out in detail in the statistical tables at the end of this report. The following is an overview.

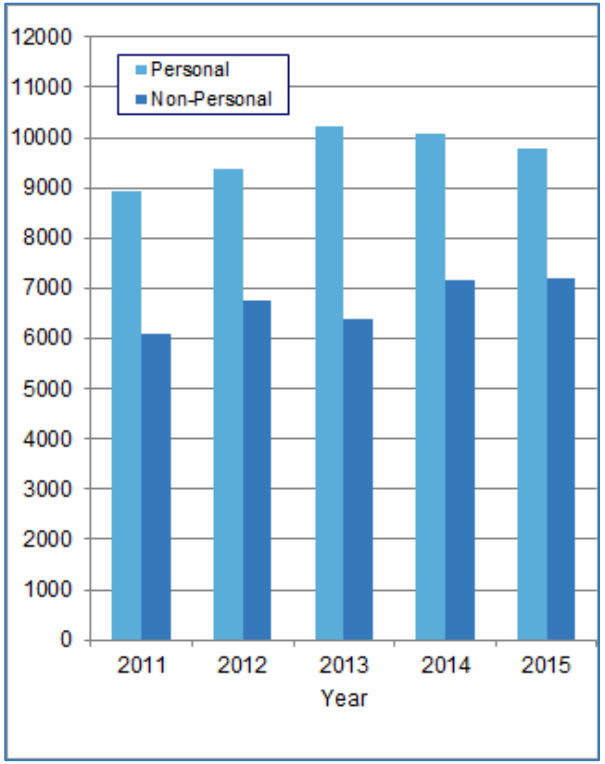
The number of access applications made to agencies under the FOI Act was 17,557 for the year under review. That represents a slight decrease from last year (17,672) and is only the second year in which the number of applications to agencies has been less than the preceding year.

Decisions

As can be seen in Table 13 (from page 94), of the decisions on access made by Ministers in the reporting period, four were to give full access; 41 were to give access to edited copies of documents; and 11 decisions were to refuse access. In two cases, no documents could be found.

Table 13 also reveals that 15,257 decisions on access applications were made by State government agencies (exclusive of local government agencies and Ministers) under the FOI Act in 2014/15.

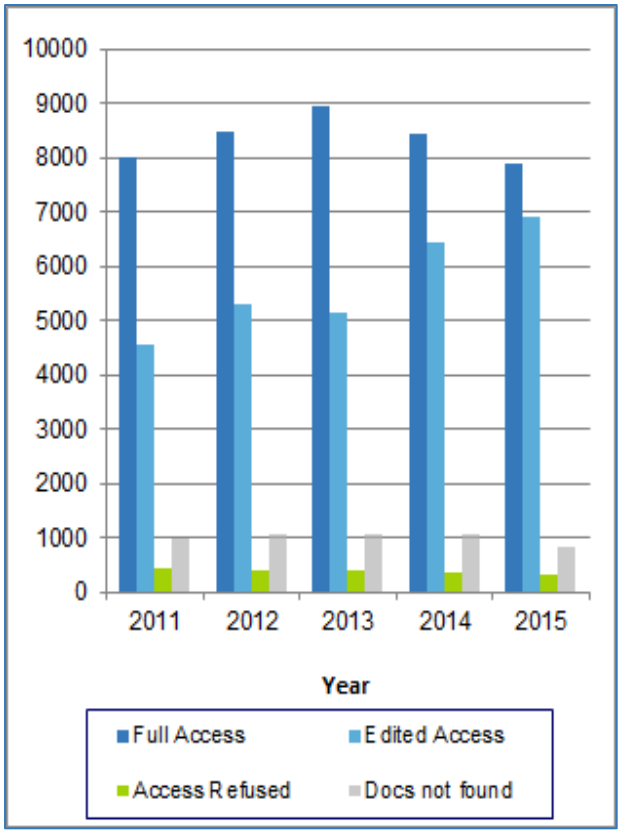
Figure 1
Number of applications decided –all agencies



Of those decisions, 50.7% of decisions (52.8% in 2013/14) resulted in the applicant being given access in full to the documents sought; 41.9% (37.8% in 2013/14) resulted in the applicant being given access to edited copies of the documents sought; and 0.7% (0.9% in 2013/14) resulted in either access being given but deferred, or being given in accordance with section 28 of the FOI Act (by way of a

medical practitioner). In 5% of applications (6.4% in 2013/14) the agency could not find the requested documents. Only 1.8% of the decisions made (2.1% in 2013/14) were to refuse access. The above figures indicate that approximately 93.2% of the 15,257 decisions made (90.6% in 2013/14) by State Government agencies on FOI applications were to the effect that access in some form was given.

Figure 2
Outcome of decisions – all agencies



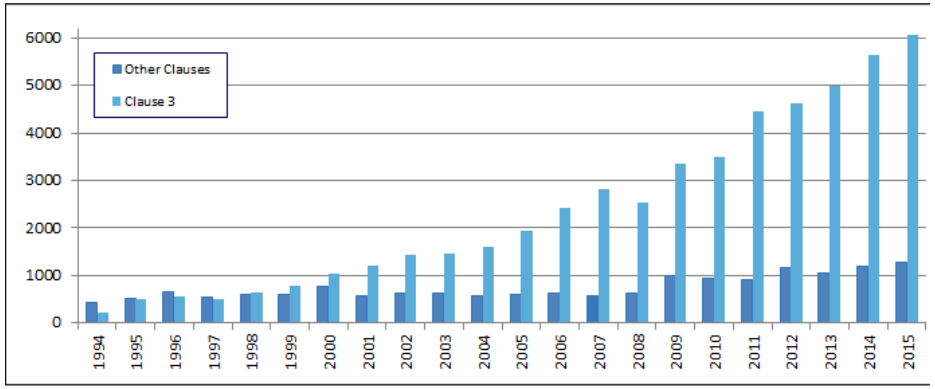
Exemptions

Also consistent with previous years, the exemption clause most frequently claimed by agencies from both State and local government sectors (excepting those claimed by Ministers and described below) was clause 3, which exempts from disclosure personal information about individuals other than the applicant. That clause was claimed 6,056 times in the year under review. Figure 3 compares the use of this clause with all other clauses used since 1993/94, which indicates continued use of the exemption to protect personal privacy.

The next most frequently claimed exemptions were: clause 8, which protects confidential communications (250 times); clause 7, which protects from disclosure documents which would be privileged from production in legal proceedings on the ground of legal professional privilege (233 times); clause 4, which relates to certain commercial or business information of private individuals and organisations (195 times); clause 5, which relates to law enforcement, public safety and property security (169 times); and clause 6, which relates to the deliberative processes of government (92 times).

Consistent with the previous reporting period, the exemption clauses claimed most by Ministers were clause 3 (personal information); clause 12 (contempt of Parliament or court); and clause 1 (Cabinet and Executive Council).

Figure 3 – Use of exemption clauses



Internal review

Agencies received 315 applications for internal review of decisions relating to access applications during 2014/15 (see Table 15 on page 111). This represents about 2% of all decisions made and about 98% of those decisions in which access was refused. In the year under review, 304 applications for internal review were dealt with (including some that were received in the previous period). The decision under review was confirmed on 220 occasions, varied on 64 occasions, reversed on 12 occasions and the application for internal review was withdrawn on eight occasions.

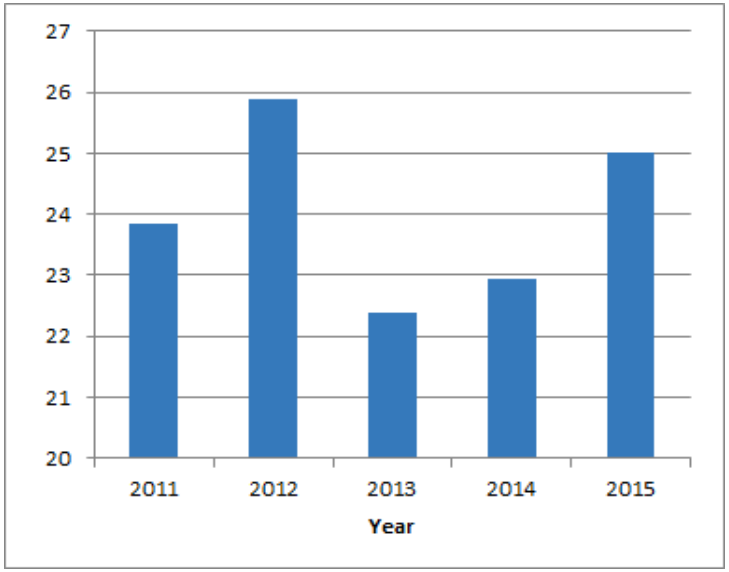
Amendment of personal information

Agencies dealt with 44 applications for amendment of personal information during the year (see Table 16 on page 116), resulting in personal information being amended on 23 occasions; not amended on 18 occasions; and amended, but not as requested, on three occasions. Of the 13 applications for internal review of decisions relating to the amendment of personal information dealt with during the year, 10 decisions were made to confirm the original decision; one decision was reversed; and two applications were withdrawn (see Table 17 on page 117).

Average time

The average time taken by agencies to deal with access applications (25 days) is slightly higher than the previous year (22.9 days) and remains within the maximum period of 45 days permitted by the FOI Act (see Figure 4).

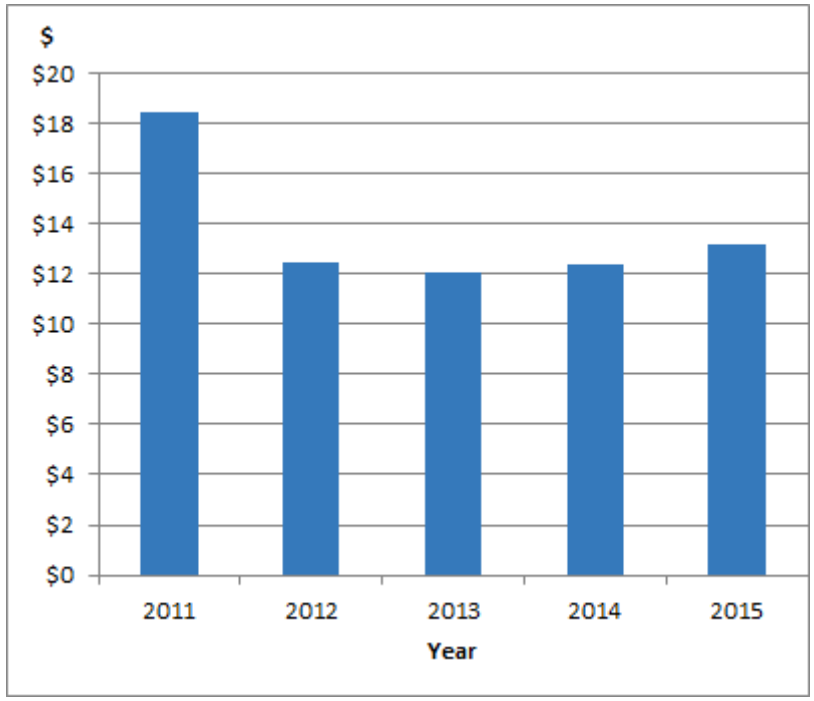
Figure 4
Average days – all agencies



Average charges

The average amount of charges imposed by agencies for dealing with access applications increased to $13.19. This is slightly higher than the 2013/14 average charge of $12.34 (see Figure 5).

Figure 5
Average charge for access – all agencies



- 2014/15 is only the second year in which the number of applications to agencies has been less than the preceding year
- 93% of decisions made by agencies were to provide access in some form
- The most used exemption continues to be for the protection of personal information about third parties
- The average time taken by agencies remains well within the 45 day limit