



Office of the
Information Commissioner

Freedom of information for Western Australia

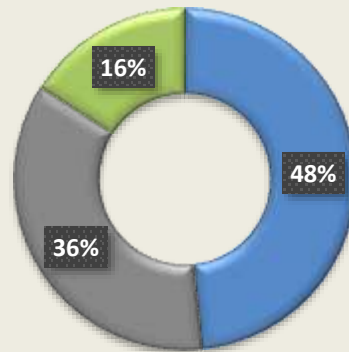
ANNUAL REPORT

2017/2018

Agency Performance

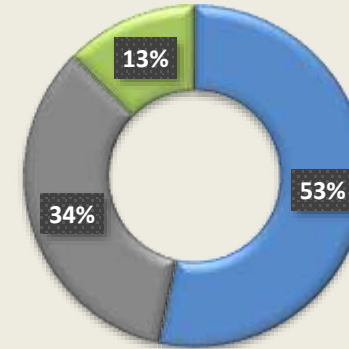
Report on operations

Applications Received



- Advice matters (224)
- External review requests (165)
- Other (74)

Applications Finalised



- Advice matters (224)
- External review requests (143)
- Other (53)

- Advice matters refer to the more formal written requests for advice regarding freedom of information from the public sector and the general public. Also included are written requests that have been misdirected to the OIC and a suitable response outlining the correct process is provided. These do not include verbal advice.
- External review requests are valid applications for external review seeking the Information Commissioner's determination.
- Other matters refer to requests for the Commissioner's determination such as: informal/invalid requests where it is not clear if the Commissioner has jurisdiction; requests to waive the requirement to consult third parties; requests to extend or reduce the time required for an agency to deal with an application; applications for external review without first applying for internal review; and requests to apply for external review out of time.

Key highlights

- [KPI overview – external review](#)
- [Conciliation](#)
- [Decisions of the Commissioner](#)
- [Legislative change](#)

- [Audit](#)
- [Other financial disclosures](#)



- [FOI in WA Conference](#)
- [Publications](#)
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- [Agency FOI Coordinator's Reference Group](#)
- [Newsletter](#)
- [Workshops for FOI practitioners](#)

- [Briefings to community groups](#)
- [Publications](#)
- [Information and assistance service](#)

Our financial performance

	Target \$000	Actual \$000	Variation \$000
Total cost of services	2,439	2,327	(112)
Net cost of services	2,435	2,291	(144)
Total equity	278	508	230
Net increase/(decrease) in cash held	(8)	86	94
Approved salary expense level	1,532	1,431	(101)

The variances have mainly come from the salaries budget. In particular: senior staff changes; the Voluntary Targeted Separation Scheme; the wages policy; and a vacant position. Some permanent staffing decisions have had to be postponed due to the changes in Commissioner throughout the year.

The OIC's audited financial statements can be found in the [Financial Statements](#) chapter. Due to the OIC's total cost of services falling below the required threshold of \$3 million, it is not necessary for the financial statements to contain explanatory statements in respect of variances.

Overview of our performance indicators

Outcome: Access to documents and observance of processes in accordance with the FOI Act

	Estimate	Actual	Variation
Advice and Awareness			
<i>Key effectiveness indicator</i>			
Agencies satisfied with advice and guidance provided	98%	99%	1%
<i>Key efficiency indicator</i>			
Average cost of service per application lodged	\$240	\$249	\$9
Resolution of Complaints			
<i>Key effectiveness indicators:</i>			
Participants satisfied with complaint resolution and external review processes	85%	80%	(5%)
Applications for external review resolved by conciliation	60%	77%	17%
<i>Key efficiency indicator</i>			
Average cost per external review finalised	\$9,190	\$8,075	(\$1,115)

Advice and Awareness

Satisfaction rate

The level of satisfaction with the advice and awareness service provided by the OIC is determined by responses received from agencies in an agency-wide survey issued at the end of each financial year. The advice and awareness service includes advice provided by telephone or email; agency training and briefings; and guidance provided by electronic media available online.

The satisfaction rate (99% this reporting period; 98% last period) is consistently high for this service.

Average cost

The average cost for Advice and Awareness services has remained relatively steady (\$249 this reporting period; \$251 last period).

Resolution of complaints

Satisfaction rate

To measure the satisfaction of the external review service, a post review questionnaire (**PRQ**) is sent to all the involved parties at the completion of every external review matter. The PRQ is designed to seek their views on whether they regard the external review process as independent, objective and fair with an emphasis on user-friendly processes that met their needs.

The target satisfaction rate was reviewed and increased for the 2016/17 year from 80% to 85%, as the actual outcome had consistently been over 85% since 2013. This year saw an 8% drop from the previous year outcome and 5% below the new target.

It is acknowledged that an ongoing challenge for the office is the timeliness of the external review process. Some relevant issues in this regard that occurred during the year include a 33% increase in received external review applications (up from 124 to 165); a decrease in FTEs; and the appointment of two successive Acting Information Commissioners following the departure of Sven Bluemmel in September 2017.

Despite these issues, the office finalised 143 external review matters this year, a 13% increase on the 127 external review matters finalised last year. We will continue to review our processes wherever practicable without compromising the integrity of the external review process.

Conciliation rate

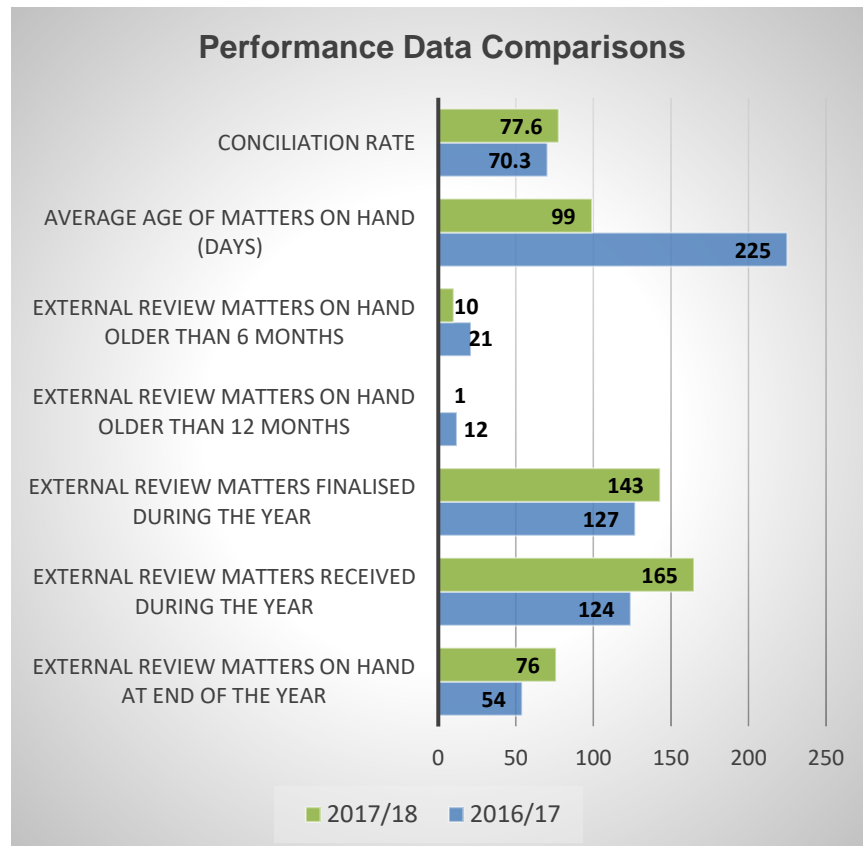
The conciliation rate is the rate at which applications for external review are resolved by conciliation or negotiation between the parties to the external review.

This year saw the highest conciliation rate recorded (77%) since 2007. Conciliation continues to be the preferred method of external review closure. Given the ongoing high rate, the target was reviewed during the year and increased to 70% from 2018/19. The new target is published in the 2018/19 budget papers.

Average cost

The cost per external review finalised was less than estimated due to fluctuations in the number and complexity of matters received and resolved, and a reduction in the total cost of services for the Resolution of Complaints (External Review) function following unanticipated reduction of staff levels during the period.

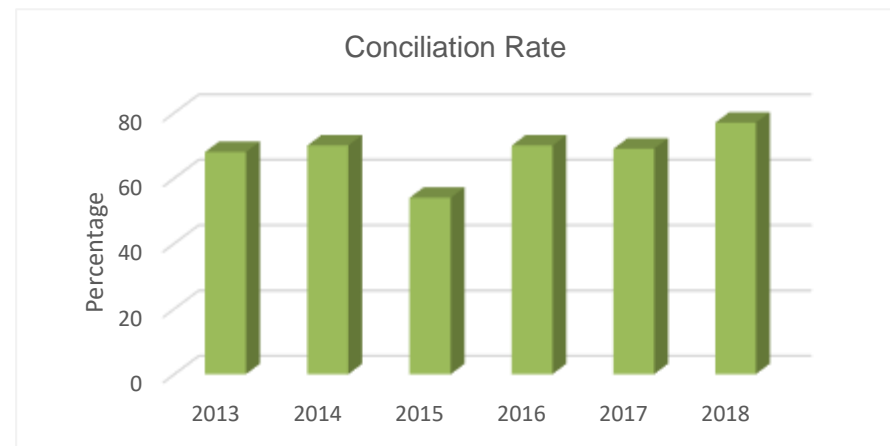
The audited key performance indicators can be found on page [44](#) of this report.



Resolution by conciliation

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 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 are not unduly legalistic or formal, preferring instead to negotiate a conciliated outcome between the parties rather than preparing a formal determination.

When any new external review matter is first assessed and assigned to a complaints officer to deal with (who acts on behalf of the Commissioner under certain delegated powers), consideration is given to any procedural options then available to resolve the matter. In particular, consideration is given as to whether proceeding to a compulsory conciliation conference is preferred over other conciliation methods, given the particular circumstances of the case at that time.



Conciliation is an important element of the external review process and can result either in resolution of the complaint or clarification or narrowing of the issues in dispute. This has the effect of making the external review process more efficient for those matters that require further review.

The conciliation rate forms one of the OIC's three effectiveness indicators.

Conciliation case study 1

In two matters, the agency refused a former employee access to certain documents relating to a workplace grievance.

The Commissioner required the parties to attend a conciliation conference.

Although the matters were not resolved at the conference, the conference provided a valuable opportunity for the parties to discuss the key issues in dispute and appeared to play an important role in the complainant subsequently cooperating in the ultimate resolution of both matters by conciliation. The complainant accepted access to edited copies of the requested documents and accepted the Commissioner's view that some documents were exempt, without requiring a formal determination.

Conciliation case study 2

The complainant applied to the agency for a copy of an investigation report that was more than 10 years old. The agency refused the complainant access to the report.

Following discussions with both of the parties, it appeared that the matter could be resolved through conciliation and the OIC subsequently conducted a conciliation conference attended by both parties. At the conference the agency agreed to provide further information to the complainant in relation to the investigation and to address certain issues of concern to the complainant. Although the complainant did not ultimately obtain a copy of the investigation report, issues that had been unresolved for 10 years were resolved through the cooperation of the parties. As a result, the complaint before the Commissioner was conciliated.

Decisions of the Information Commissioner

Sometimes applications for external review cannot be resolved through conciliation. In such cases the Commissioner may need to finalise a complaint by issuing a binding final determination. However, before issuing a final determination the Commissioner will usually issue a written preliminary view to the parties to the complaint.

The purpose of the preliminary view is to give the parties involved an opportunity to review the Commissioner's understanding of the matters in dispute; identify any factual errors; and provide new and relevant information or submissions before the matter is finalised. While there is no legislative requirement to provide a preliminary view, the FOI Act does provide that the parties to a complaint are to be given a reasonable opportunity to make submissions.

The preliminary view will generally include the following information:

- the background to the complaint (when relevant);
- a summary of the key steps taken during the external review process;
- a description of any preliminary issues and their outcomes;
- a description of the matter that remains in dispute;
- a summary of the relevant submissions made to date; and
- the Commissioner's consideration and preliminary view based on all the information provided.

The preliminary view letter is addressed in full to the party to whom the Commissioner's preliminary view is largely adverse, with a copy provided to the other parties (abridged if necessary to avoid disclosure of potentially exempt matter). Based on the preliminary view of the Commissioner, each party is provided the opportunity to reconsider their position and either choose to withdraw from the matter or provide further submissions in support of their claim.

If any matters remain in dispute the Commissioner will, after considering any further information and submissions following the preliminary view, formally determine the issues in dispute between the parties. The parties are informed in writing of the final decision and the reasons for it. The Commissioner is required to publish decisions in full or in an abbreviated, summary or note form which are published on the OIC's website. It is the usual practice to identify all of the parties to the complaint in the published decision, except in certain circumstances.

During the reporting period 13 complaints were finalised by formal published decision of the Commissioner. A summary of each follows.

[Refusal to deal with an application for traffic infringements incurred by bus drivers](#)

Re Seven Network (Operations) Limited and Public Transport Authority [2017] [WAICmr 18](#)

The complainant sought access to documents relating to traffic infringements incurred by WA bus drivers during a specific period. The agency refused to deal with the complainant's access application under section 20 of the FOI Act on the ground that to do so would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The agency claimed that amalgamating this particular application with a previous application from the complainant justified the agency refusing to deal with the current application. The Commissioner was not persuaded by this

argument as the question that must be answered is whether dealing with the application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, taking into account the workload of the agency such as its work on other FOI matters at that time, which may include several applications from the same complainant.

The Commissioner considered the agency's submissions regarding its resources and the work involved in dealing with the application. However, the Commissioner was not satisfied that dealing with the application would divert a substantial and unreasonable portion of the agency's resources away from its other operations and found that the agency had to deal with the complainant's access application in accordance with the provisions of the FOI Act.

The agency's decision was set aside.

The application fee and personal information vs non-personal information

Re 'U' and Western Australia Police [2017] [WAICmr 19](#)

The complainant sought access to documents relating to criminal charges brought against the complainant and did not pay the prescribed \$30 application fee for making an application for non-personal information. As a result, the agency claimed that the scope of the application was limited to personal information about the complainant.

The agency gave the complainant access to edited copies of the requested documents on the basis that the deleted information was non-personal information and therefore

outside the scope of the access application. The complainant applied for external review of the decision to give edited access.

The Commissioner noted that the agency had specifically advised the complainant that his application would be treated as an application for personal information only. The Commissioner was satisfied that the information deleted by the agency was non-personal information and therefore outside the scope of the access application.

The agency's decision was confirmed.

Application to amend large amounts of personal information

Re Appleton and Department of Education [2017] [WAICmr 20](#)

The complainant applied to amend personal information about himself contained in documents of the agency.

The complainant's amendment application consisted of approximately 459 pages and requested amendment of 387 pieces of information in 82 documents. The agency refused to make the requested amendments, but offered to add to his personal file a copy of his amendment application and a notation stating he disputed the accuracy of certain personal information.

The Acting Information Commissioner (**A/Commissioner**) was of the view that Parliament did not envisage or intend that the amendment provisions in the FOI Act would require an agency to deal with an application for amendment of the size the complainant had made. In the circumstances of the particular case and having regard to the objects of the FOI

Act, other provisions in the FOI Act including section 20, the nature and size of the complainant's application and the work involved in the agency dealing with the totality of his amendment application (which the A/Commissioner considered was mostly without merit), the A/Commissioner found that the decision of the agency not to amend information in accordance with the complainant's amendment application was justified.

The decision of the agency was confirmed.

Documents of a previous Minister

Re Farina and Minister for Environment [2017] [WAICmr 21](#)

The complainant applied to the Minister for Environment for access to documents relating to the new Bunbury offices of the Department of Parks and Wildlife. The then Minister refused access to some of the requested documents in full or in part on the grounds they were exempt under clauses 1(1) and 12(c) of Schedule 1 to the FOI Act.

While the matter was before the Commissioner there was a change of government after the State Government election in March 2017. Given the change of government and that the Minister at the time of the complainant's access application and the application for external review was no longer the Minister, the A/Commissioner found that the requested documents were no longer documents of the agency, being the current Minister.

As a result, the FOI Act no longer applied to the requested documents.

The former Minister's decision was set aside.

Refusal to deal with an application for CCTV footage

Re Seven Network (Operations) Ltd and Public Transport Authority [2017] [WAICmr 22](#)

The complainant made six access applications to the agency for access to CCTV footage of various kinds of incidents that had occurred on the agency's train network. The agency decided to amalgamate all of the complainant's access applications and refused to deal with the amalgamated application under section 20 of the FOI Act on the ground that to do so would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The A/Commissioner was of the view that there is nothing in the FOI Act expressly dealing with whether or not an agency may amalgamate two or more access applications and considered that it was not necessary to express a conclusion as to whether the agency was entitled to amalgamate the access applications. In the A/Commissioner's view, the relevant question was whether the work involved in dealing with the totality of the complainant's access applications would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The A/Commissioner was satisfied on the information before her that the agency had taken reasonable steps to help the complainant to change its amalgamated application to reduce the amount of work needed to deal with it, and that the work

involved in dealing with the amalgamated application would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The agency's decision was confirmed.

Access to documents regarding a complaint about the applicant

Re Donovan and Curtin University of Technology [2017] [WAICmr 23](#)

The complainant applied to the agency for access to documents relating to a complaint against him. The agency refused access to the documents claiming they were exempt under clause 7(1) as the documents would be privileged from production in legal proceedings on the ground of legal professional privilege.

During the external review process the complainant withdrew his complaint in respect of certain documents. In addition, the agency withdrew some of its claims for exemption and released some of the documents.

In respect of the remaining documents, the A/Commissioner was of the view that the agency's submissions did not add anything material to support its claim under clause 7(1), noting that the agency must establish the facts giving rise to legal professional privilege.

Based on the material before her, the A/Commissioner was not satisfied that the disputed documents would be privileged from production in legal proceedings on the ground of legal

professional privilege and found that the disputed documents were not exempt.

The agency's decision was set aside.

Access to documents containing third party commercial information

Re Cockburn Cement Limited and Department of Water and Environmental Regulation [2017] [WAICmr 24](#)

The agency received an access application for certain documents relating to Cockburn Cement Limited and decided to give the access applicant access to the documents. Cockburn Cement was consulted as a third party during this process.

Cockburn Cement (the complainant in the matter before the A/Commissioner), sought review of the agency's decision to give access to certain documents on the basis that release of the documents would reveal trade secrets of the complainant (clause 4(1)); reveal information that has a commercial value to the complainant and could reasonably be expected to destroy that commercial value (clause 4(2)); and that disclosure would reveal information about the business, professional, commercial or financial affairs of the complainant and could reasonably be expected to have an adverse effect on those affairs, or prejudice the future supply of information of that kind to the Government or an agency (clause 4(3)).

The A/Commissioner found that some of the disputed information was exempt under clause 4(2) of Schedule 1 to the FOI Act. The remaining disputed information was found to

be not exempt under clauses 4(1), 4(2) or 4(3). The A/Commissioner also found that access to one document should be by inspection only because the document was subject to copyright.

The agency's decision was varied.

Refusal to deal with an application for CCTV footage

Re Seven Network (Operations) Limited and Public Transport Authority [2018] [WAICmr 1](#)

Following correspondence with the complainant to change the scope and reduce the work needed to deal with its access application for CCTV footage, the agency refused to deal with the application under section 20 of the FOI Act on the ground that to do so would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The A/Commissioner accepted that the agency had taken reasonable steps to reduce the scope of the application. However, the A/Commissioner was not satisfied that the work involved in dealing with the access application would divert a substantial and unreasonable portion of the agency's resources from its other operations. The A/Commissioner found that the agency was required to deal with the complainant's access application in accordance with the FOI Act.

The agency's decision was set aside.

Personal information and the public interest

Re 'S' and Department for Child Protection and Family Support [2018] [WAICmr 2](#)

This matter was remitted to the Commissioner by the Supreme Court in *S v Department for Child Protection and Family Support* [2017] [WASC 305](#). The A/Commissioner was required to determine whether disclosure of the disputed matter (being personal information) would, on balance, be in the public interest, as described in clause 3(6).

The A/Commissioner was of the view that the public interest in protecting the privacy of third parties outweighed the public interest in disclosing personal information about third parties. On balance, the A/Commissioner was of the opinion that it was not in the public interest for sensitive personal information about other individuals to be placed in the public domain by way of the FOI process. The A/Commissioner found that the disputed matter was exempt under clause 3(1) of Schedule 1 to the FOI Act.

The agency's decision was confirmed.

Documents regarding legal proceedings against the applicant

Re Wells and Legal Profession Complaints Committee [2018] [WAICmr 3](#)

The complainant applied for access to documents comprising or referring to communications between the agency and other parties in relation to legal proceedings against him.

The agency refused access to some of the documents claiming they were exempt under clause 7(1) as the

documents would be privileged from production in legal proceedings on the ground of legal professional privilege.

The complainant alleged that the disputed documents were made in the course of, or furtherance of, an unlawful or improper purpose. Based on the material before her, and applying *Department of Housing and Works v Bowden* [2005] [WASC 123](#) and *Re Duggan and Department of Agriculture and Food* [2011] [WAICmr 31](#), the A/Commissioner was satisfied that, on their face, the disputed documents would be privileged from production in legal proceedings on the ground of legal professional privilege.

Once the A/Commissioner decided that particular documents are on their face the subject of legal professional privilege, then that is all that is required to establish the exemption under clause 7(1). Accordingly, the A/Commissioner found that the disputed documents were exempt.

The agency's decision was confirmed.

Access to correspondence regarding legal matters

Re Hobday and State Solicitor's Office [2018] [WAICmr 4](#)

The complainant sought access to documents in relation to his correspondence with the Attorney General and the agency between 1998 and 2006 regarding his lead poisoning, consideration for ex gratia payment, alleged misconduct by officers in various departments and other matters. The agency refused access to the disputed documents on the ground that they were exempt under clause 7(1) of Schedule 1 to the FOI Act.

The A/Commissioner found that the disputed documents were exempt under clause 7 on the basis that they would be privileged from production in legal proceedings on the ground of legal professional privilege.

The agency's decision was confirmed.

Documents that cannot be found or do not exist

Re Wells and Legal Practice Board of Western Australia [2018] [WAICmr 5](#)

The complainant applied to the agency for access to several categories of documents in relation to the Roll of Certified Legal Practitioners, including changes to the appearance of his name and status on the Roll. The agency claimed exemption in full or in part for certain documents and refused access to documents on the basis that those documents could not be found or do not exist, as described in section 26 of the FOI Act.

During the course of the external review the agency undertook further searches and gave the complainant access to additional documents. The agency also withdrew its claims for exemption and released all of the documents it had identified as coming within the scope of the access application.

The only issue left in dispute was the complainant's claim that further documents should exist.

The A/Commissioner stated that when dealing with section 26 of the FOI Act, the following questions must be answered. First, whether there are reasonable grounds to believe that

the additional documents exist or should exist and, second, whether the additional documents are, or should be, held by the agency.

Where those questions are answered in the affirmative, the next question is whether the agency had taken all reasonable steps to find the additional documents. The A/Commissioner was not satisfied that there were reasonable grounds to expect that additional documents exist or should exist. Further, the A/Commissioner was satisfied that the agency had taken all reasonable steps to find additional documents.

The agency's decision was confirmed.

Personal information and the public interest

Re Goiran and Department of Health [2018] [WAICmr 6](#)

The complainant sought access to documents that included information about induced abortions carried out after 20 weeks gestation. The agency gave the complainant access to edited copies of documents with certain information deleted on the basis it was exempt under several clauses, including clause 3(1) of Schedule 1 to the FOI Act.

During the course of the external review the agency gave the complainant access to some additional information. The complainant maintained that the remaining disputed information was not exempt under clause 3(1), that the release of the information would not identify individuals and that the public were entitled to know the information.

The A/Commissioner was satisfied that disclosure of the disputed information, when considered with the information to

which access had already been given, would disclose personal information that was prima facie exempt under clause 3(1). The A/Commissioner did not consider that the public interest in disclosing that personal information outweighed the privacy of those individuals, or that the disclosure of very specific medical information about individual patients would make the agency more accountable or enable the public to participate more effectively in the governing of the State. Accordingly, the A/Commissioner found that the disputed information was exempt under clause 3(1).

The agency's decision was confirmed.

FOI in WA Conference – 'Recognising and building our FOI capacity'

Agencies play a critical role in helping to achieve the legislative objects of the FOI Act to enable greater public participation in our democracy and make government more accountable to the public. Effective freedom of information relies on capable agency decision-makers and an environment in which FOI is an effective part of an agency's operations.

In recognition of this and a result of discussions with the Agency FOI Coordinator's Reference Group, the OIC held its inaugural 'FOI in WA Conference' on 10 August 2017 at the Fiona Stanley Hospital Education Building.

Professor John McMillan AO, Acting NSW Ombudsman, accepted our invitation to be our key note speaker for the conference. In addition to being the inaugural Australian Information Commissioner from 2010 to 2015, he has held

positions as the Commonwealth Ombudsman and the Acting Integrity Commissioner for the Australian Commission for Law Enforcement Integrity. He is also an Emeritus Professor at the Australian National University, where he taught administrative and constitutional law from 1983-2003.

The keynote speech was followed by the panel discussion 'FOI in 2017 – the Challenges and Opportunities to Achieving the Objects of the FOI Act'. Cathrin Cassarchis, the WA State Archivist and Executive Director State Records; Giles Nunis, the former WA Government Chief Information Officer; and Lynsey Warbey, Commissioner's Counsel at WA Police, joined Professor McMillan in this panel discussion chaired by the former WA Information Commissioner, Sven Bluemmel.



Panel members: S Bluemmel (chair), C Cassarchis, J McMillan, L Warbey, and G Nunis

'Professor McMillan was a highlight. I found him to be an excellent speaker and gave a broader view on how FOI works nationally and in other States.'

[conference survey respondent]

A number of concurrent sessions followed, which allowed participants to attend sessions that were most relevant to them. These were delivered by FOI practitioners from the sector and by officers from the State Solicitor's Office and the OIC. Together with some sessions that considered particular exemptions under the FOI Act, topics included:

- The practicalities of managing FOI applications and FOI knowledge
- Quality information, quality archives and the ethics of online access
- Third party information – what you need to know
- Developing in-house FOI awareness
- Interpersonal skills for FOI Coordinators
- Perspectives on refusing to deal with an access application
- Considering disclosure outside of the FOI Act
- Managing difficult conversations

The day concluded with the Information Commissioner's presentation 'FOI in WA – what you do and how you do it matters'.

From the point of view of the OIC it was a successful day with 269 officers attending from the State and local government

'Networking with so many other FOI people made me realise how many other people are out there dealing with the same issues every day.'

'It helped to update and refresh my understanding of my responsibilities as a records officer toward FOI.'

[conference survey respondents]

sectors. Shortly after the conference a survey was sent to all attendees seeking their feedback and of 141 respondents, 99% stated that the conference met or exceeded their expectations and 89% agreed or strongly agreed that the day provided information that they could apply in their work.

The conference was coordinated by Alison McCubbin, Coordinator Education and Communications. Alison was assisted by the Conference Steering Committee, consisting of OIC staff and agency FOI practitioners.



Conference Steering Committee members: A McCubbin, OIC; L Roberts, Department of Transport; S Bluemmel, OIC; L Simpson, Department for Child Protection and Family Support; N Xanthis, Department of the Premier and Cabinet; M Fitzgerald, OIC; T Manton, Main Roads WA; H Stanley, Royal Perth Hospital; A Jordan-Keane, Fiona Stanley Hospital; S Sanders, Department of the Premier and Cabinet; and K Bracknell, OIC.

The contribution and willingness of the Committee members to share their time, skills and experience to assist in developing a successful conference to improve the administration of freedom of information in Western Australia is much appreciated.

We are especially indebted to Fiona Stanley Hospital for allowing us to use their facilities, and also to the hospital's volunteers for their invaluable assistance.

‘...meeting other agency people who also handle FOI applications. It was great to know that I'm not alone!’

‘I left the conference with some really good ideas on how to better communicate FOI within my workplace.’

[conference survey respondents]

Training and briefings for individual agencies

An understanding of the basics of freedom of information should form part of any public sector employee's competency, and the OIC provides in-house briefings to agency staff to assist with this. The decision to give more specific onsite decision-making training is based on the needs of particular agencies and the resources of the OIC. Where possible agency decision-makers are encouraged to attend the training at OIC premises.

The A/Commissioner wrote to the Directors General of the agencies those were impacted by Machinery of Government amalgamations and offered a briefing for their Corporate Executive officers about the responsibilities and opportunities

provided by the FOI Act. Briefings were subsequently provided to: the Department of Biodiversity, Conservation and Attractions; the Department of Local Government, Sport and Cultural Industries; the Department of Education; the Department of Water and Environmental Regulation; and the Department of Justice.

Briefings for community service groups

This year the OIC has provided joint presentations with the Public Sector Commission and Ombudsman to three community groups.

Briefings for community groups and not-for-profit groups can equip advocates with the skills to make effective access applications. While briefings for advocacy groups include advice about rights to access documents under the FOI Act, they also stress the desirability of working with agencies to achieve a mutually acceptable outcome. These briefings can help to ensure that applicants are realistic in their expectations of what an agency can provide.

Speaking engagements

The A/Commissioner and other staff have been guest lecturers at a number of WA Universities introducing students to important legal issues associated with freedom of information legislation. Invitations were also accepted to talk about freedom of information to a variety of groups that recognise the importance of freedom of information to their members and to the wider society.

[Table 8](#) under OIC Statistics lists all the training and presentations undertaken during the year.

Audit

Internal audit

In June 2018, OIC engaged Braxford Consultancy to conduct an audit of the OIC's finance, human resource and asset processes. Five recommendations of medium to high risk were made, including ensuring policies are updated in a timely manner and ensuring clear responsibilities and segregation of duties are defined. A major factor contributing to these risks were an unusually high number of key staff movements and competing priorities.

This audit has shown how unexpected changes in a small office can have a significant effect which, without appropriate processes and safeguards in place, exposes us to non-compliance and risk. These issues will be a focus going forward.

Braxford Consultancy also conducted our annual State Supply Commission audit for the period 1/5/17 – 30/4/18. The audit found that we were partially compliant and made the following three recommendations: ensuring appropriate expiry dates are indicated on contracts and are reviewed after appropriate periods; monitoring long-standing and ongoing contracts to ensure accumulated costs potentially reaching the \$50,000 value threshold are published on Tenders WA; and ensuring the contracts register fully complies with Treasurer's Instruction 820.

All the findings and recommendations were accepted and are pending action.

External audit

As with the previous two years, the external audit of the OIC by the Office of the Auditor General has been conducted in two stages: the first stage for the financial statements and the second stage for the key performance indicators. Delaying the audit of key performance indicators allows survey data collected throughout July from State and local government agencies to be properly collated and reviewed.

The need to incorporate our finance policies into a comprehensive finance manual was highlighted, and a completion date of 31 December 2019 was provided to the Auditor General.

Our Resources

Agency FOI Coordinators Reference Group (AFRG)

The AFRG, formed in August 2015, meets quarterly and currently consists of some staff of the OIC and officers from ten agencies that are representative of the different agency types in the sector. The purpose of the AFRG is to promote and advocate good FOI practice and the meetings continue to provide an opportunity for the OIC to hear directly about current issues facing agencies with respect to freedom of information.

These discussions are an important contributing factor to the advice and awareness activities of the OIC. It was feedback via the reference group meetings that prompted the OIC to host a conference for FOI practitioners, which led to the FOI in WA conference held on 10 August 2017 (see page [19](#)).

Members of the AFRG are encouraged to share information from meetings of the group with similar agencies and to feed information back from those agencies to the group.

FOI Newsletter

The OIC publishes a newsletter every two months which provides an opportunity to address current or recurring FOI issues. While the information contained in the newsletter is primarily targeted to agency staff, it includes information that may be of interest to members of the public. Subscribers to the newsletter also receive alerts when decisions of the Commissioner are published on our website. Subscriptions can be registered at: <http://oic.wa.gov.au/en-us/UR100>.

Website

The website address was changed during the year to www.oic.wa.gov.au.

Wherever possible the OIC's resources are published on the website, including guides for members of the public and agencies; decisions; annual reports; the FOI Coordinator's Manual; the OIC's newsletter; the customer service charter; the Disability Access and Inclusion Plan; the gift register; and corporate credit card statements.

Requests for attendance at our training courses are also registered via our website.

Online decision search tool

Decisions of the Commissioner are published on the OIC's website as soon as practicable after being handed down and provided to the parties. A comprehensive search facility is available for full decisions whereby users can search for specific exemption clauses, sections of the FOI Act or words and phrases found in the decisions. For these criteria, the facility will search the catchwords found at the beginning of each full decision:

FREEDOM OF INFORMATION – refusal of access – lease of premises commonly known as 'Indiana Tea House' – section 30(f) – the requirements of a notice of decision if the decision is to refuse access – section 102 – burden of proof – section 33 – safeguards for affected third parties – clause 4(3) – adverse effect on business affairs – clause 4(7) – public interest – clause 8(1) – breach of confidence – clause 8(2) – information of a confidential nature obtained in confidence.

The Commissioner often issues decision notes, which are not as comprehensive as full decisions but are still captured by the search facility when searching by agency or complainant name, selecting decisions between dates, or a particular outcome.

A Google search is also available that will search the full text of both full decisions and decision notes.

The decision search facility is a very helpful tool for FOI practitioners to search for precedents relevant to matters they are dealing with.

The Commissioner's decisions are also available and searchable on the Australasian Legal Information Institute (**AustLII**) [website](http://www.austlii.edu.au) under Western Australia case law. AustLII

provides a free online database of Australasian legal materials.

Publications

The OIC maintains a suite of online guides for agencies to assist them meet their obligations under the FOI Act. For members of the public, guidance on making FOI applications and understanding the FOI process is provided. [Table 11](#) lists the current publications that provide FOI assistance.

The FOI Coordinator's manual is used for the FOI Coordinator's workshop run throughout the year and is also available online. It is a comprehensive reference tool for FOI Coordinators and is intended to be an evolving resource. It is updated with new guidance material as required and references to new decisions of the Commissioner when relevant. Version 2.7 of the manual was most recently published in June 2018.

FOI Coordinators and Decision Writing Workshops

The FOI Coordinators Workshop is the key training forum provided by the OIC. Participants in this workshop include officers who have responsibility for information access processes and decisions within their agencies. Some participants are new to freedom of information and some use the workshop as a refresher to ensure that their agency's processes and policies continue to accord with best practice.

The Decision Writing Workshop aims to build on the same material addressed in the FOI Coordinators Workshop (which can also be obtained by pre-reading the FOI Coordinators Workshop manual) to assist attendees understand what is

needed to write a notice of decision that complies with the requirements of the FOI Act. It also demonstrates an appropriate process to use in reaching a decision in response to an FOI access application.

This year the cap for enrolments was increased from 20 to 25 participants per workshop to counteract the reduction in the number of workshops offered this year. A waitlist is available to ensure we can backfill workshops when there are cancellations.

The feedback received about our training has been very positive. It is recognised that participants have a variety of experience and needs. The OIC seeks to address this by providing a clear idea of what will be provided in the training and by having supplementary materials available outside of training.

'I consider that the training was pitched perfectly to all levels of participant involvement in FOI. The presenters were welcoming, enthusiastic, knowledgeable and engaging. Well done and thank you!'

[training survey respondent]

Information and assistance service



The OIC provides a general information service for members of the public and agency staff. The information provided is intended to ensure that members of the public are equipped with the knowledge to be able to access documents both outside the FOI Act, where possible, and in accordance with the FOI Act when an access application is appropriate. Agency officers are assisted to understand their obligations under the FOI Act.

Legal advice or specific rulings on particular issues or sets of facts is not provided by OIC staff.

Our workplace

One of the benefits of a small office is the close-knit environment. The OIC maximises the benefits of this through the long standing establishment of a staff funded social club that organises events throughout the year to unwind and strengthen relationships.

Our operational plan includes the development and implementation of an office wellness policy to formalise our commitment to looking after our employees. The physical, mental and emotional wellbeing of staff is vital in a happy and productive environment. Volunteering in community events is encouraged and is an area staff have agreed to build on.

Law Week Walk for Justice

On 15 May 2018, for the third year the OIC fielded a team of walkers to participate in the 4.4 km Law Week Walk for Justice along the Perth foreshore, with representatives from major law firms, barristers and judicial officers. The walk was led by the Chief Justice of Western Australia to raise funds for the charity Law Access, which matches individuals and community organisations seeking legal assistance with pro bono lawyers. Law Access assists some of the most vulnerable people in WA, who would otherwise be unable to obtain legal assistance.

OIC staff raised \$300.00 which contributed to the overall total raised of over \$40,000.

Tristan Jepson Memorial Foundation

The OIC continues to support 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.