



# Office of the Information Commissioner

*Freedom of information for Western Australia*



## **ANNUAL REPORT 2018/2019**

# Operational Performance

## Snapshot of financial and operational performance indicators

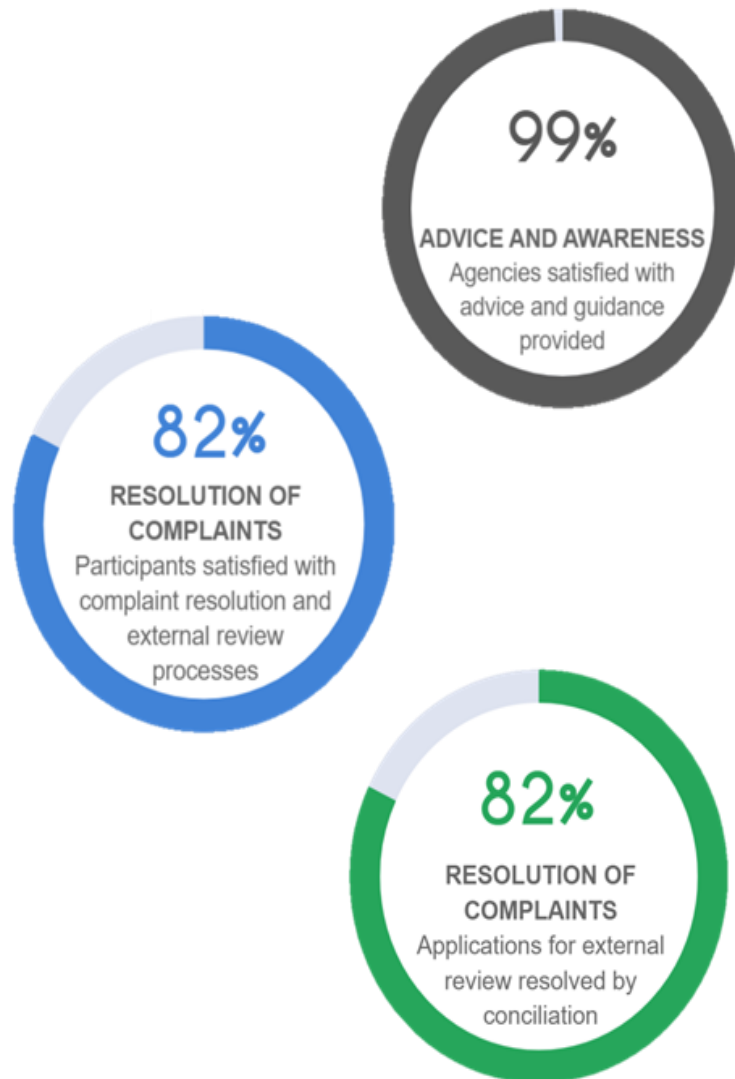
	Target \$000	Actual \$000	Variation \$000
Total cost of services	2,369	2,213	(156)
Net cost of services	2,365	2,213	(152)
Total equity	501	618	117
Net increase/(decrease) in cash held	(8)	171	179
Approved salary expense level	1,598	1,482	(116)

See the [Key Performance Indicators](#) and [Financial Statements](#) sections of this report for the OIC's full audited performance and financial reports. The OIC's total cost of services falls below the required threshold requiring explanatory statements in respect of variances. The OIC is also a Tier 2 agency and as such the financial reporting requirements are reduced.

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

	Estimate	Actual	Variation
<b>Resolution of Complaints</b>			
<i>Key effectiveness indicators:</i>			
Participants satisfied with complaint resolution and external review processes	85%	82%	(3%)
Applications for external review resolved by conciliation	70%	82%	12%
<i>Key efficiency indicator</i>			
Average cost per external review finalised	\$10,966	\$7,414	(\$3,562)
<b>Advice and Awareness</b>			
<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	\$215	\$316	\$101

## Operational highlights



## External Review

**STRATEGIC GOAL:** *Provide a fair, independent and timely external review service*

The main function of the Commissioner is to review decisions made by agencies under the FOI Act.

The performance of this service is measured in two ways: by the satisfaction of participants of an external review with the way in which the external review was conducted; and by the number of external review applications resolved by conciliation.

Detailed performance data on the number of external review applications received, completed, the number currently on hand and their age, is updated monthly and published on our [website](#).

### Conciliation

The Commissioner has powers to deal with external review in a number of ways including by conciliation, negotiation and compulsory conferences. These are in addition to the power to resolve an external review 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 issuing a formal determination.

When any new external review is assessed and assigned to an 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.

This year's conciliation rate of 82% is a historic high and is 5% higher than last year.

### *Conciliation Case Studies*

#### Withdrawal of exemption claim by agency

The complainant applied to the agency for access to documents relating to a disciplinary investigation to which he was a party. The agency claimed the documents were exempt under clause 6(1) of Schedule 1 to the FOI Act on the grounds that the deliberations were ongoing.

The agency was advised that the Commissioner was unlikely to be persuaded that the documents were exempt under clause 6(1), but that some information was likely to be exempt under clause 3(1) (personal information). A meeting was held with the agency and its legal representatives to discuss the matter.

Following the meeting the agency reconsidered its claims and gave the complainant access to an edited copy of the documents. As a result of further discussion with the

agency, a revised edited copy of the documents was provided to the complainant. An explanation of why the clause 3 exemption was likely to apply was provided to the complainant together with links to previous decisions of the Information Commissioner.

As a result, the complainant was satisfied that the matter had been resolved and withdrew the application for external review.

#### Agreement reached by parties regarding reduced scope of access application

The complainant applied to the agency for a copy of certain documents relating to a workplace grievance to which he was a party. The agency refused to deal with the complainant's access application under section 20 of the FOI Act on the grounds that the work involved in dealing with it would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The Commissioner required the parties to attend a conciliation conference. At the conference, the complainant agreed to reduce the scope of his access application to certain documents. The agency agreed to deal with the access application in those revised terms and to give the complainant its notice of decision on access to the documents by an agreed date.

As a result, the complainant withdrew the application for external review and the matter was resolved.

### Completion of internal review process

The complainant applied to the agency for access to documents relating to an incident that he was involved in that was investigated by the agency. The agency refused access to the requested documents on the basis they were exempt under clauses 3 and 5 of Schedule 1 to the FOI Act because they contained personal information about third parties and, if disclosed, would 'reveal the investigation'. The complainant applied for internal review and also reduced the scope of his application by advising that personal information about third parties could be deleted from the documents. As the agency failed to deal with his application for internal review within the 15-day period allowed under the FOI Act, the agency was deemed to have confirmed the initial decision. The complainant sought external review by the Information Commissioner of that deemed decision.

Inquiries were made with the agency about why it failed to complete the internal review process and seeking further reasons for the exemptions claims made in the agency's initial decision.

The agency acknowledged the oversight and dealt with the matter as if it was the subject of internal review, albeit after being before the Commissioner on external review. The agency reconsidered its decision and withdrew its exemption claim under clause 5. As a result, the agency gave the complainant access to the disputed documents with personal information about third parties deleted, in accordance with the reduced scope.

The complainant was satisfied with the outcome and did not proceed with the external review.

### Agency acceptance of Commissioner's preliminary view

The complainant applied to the agency for a copy of certain versions of a report prepared by a consultant. The agency refused access to the documents on the grounds they were exempt under clause 6(1) of Schedule 1 to the FOI Act (deliberative processes of an agency).

The Commissioner required the parties to attend a conciliation conference. The matter was not resolved at the conference. The complainant subsequently agreed to limit the request to two versions of the report and agreed that certain personal information could be edited from the documents. In addition, the complainant accepted the view of one of the Commissioner's officers that a small amount of information in the documents was exempt under other exemption clauses and agreed that it could be deleted on that basis.

After considering all of the material before her including submissions made by the parties, the Commissioner's preliminary view was that the documents were not exempt under clause 6 as the agency claimed. The agency accepted the Commissioner's preliminary view and gave the complainant access to edited copies of the disputed documents, deleting certain personal

information as agreed. The complainant was satisfied with the access provided and the matter was resolved.

### Agreement to disclosure after receipt of adequate written authority

Lawyers who advised that they acted on behalf of a named person (**the complainant**), applied to a health related agency for access to the complainant's medical record. Under section 29 of the FOI Act, if an agency gives access to personal information about the applicant, the agency has to take reasonable steps to:

- (a) satisfy itself of the identity of the applicant; and
- (b) ensure that only the applicant or the applicant's agent, nominated in writing, receives the document.

In this case, the lawyers did not provide sufficient written authority to the agency that satisfied the agency's obligations under section 29 of the FOI Act.

The agency requested additional supporting documentation from the lawyers, but it was not provided. In the absence of that information, the agency decided that it did not have sufficient information to satisfy its obligations under section 29. As a result, the agency refused access to the requested documents on the basis that they contained personal information about a third party and were exempt from disclosure under clause 3 of Schedule 1 to the FOI Act.

When applying for external review of the agency's decision, the lawyers advised that they had now obtained the necessary written authority from the complainant. Before taking any further action, one of the Commissioner's officers asked the lawyer to give the new written authority to the agency and to ask the agency to reconsider its position on access. On receipt of the new written authority, the agency amended its decision on access and gave the lawyer access to the complainant's medical record. The lawyer was satisfied with the access provided and the matter was resolved.

### Acceptance by access applicant that requested information was exempt

An access applicant sought access to documents that contained information about a third party (**the complainant**). The agency decided to disclose the information about the complainant and consulted the complainant pursuant to section 33 of the FOI Act. The complainant submitted that a very small amount of the information (**the disputed information**) was exempt under clauses 4(3) (business information) and 5(1)(e) (public safety) of Schedule 1 to the FOI Act. The agency maintained its decision to give access to the disputed information. The complainant applied to the Information Commissioner for external review.

During the external review the agency reconsidered its decision on the basis that it had not properly considered whether the disputed information was exempt under clause 4(3). The agency varied its decision and accepted

that disclosure of the disputed information could reasonably be expected to have an adverse effect on the business, professional, commercial or financial affairs of the complainant. The complainant's earlier claim under clause 5(1)(e) was no longer in dispute.

The access applicant was advised that the agency had varied its decision to give access to the disputed information and was invited to be joined to the matter. The access applicant was given an explanation about why the Commissioner was likely to consider that the disputed information is exempt under clause 4(3) and a copy of relevant published decisions of the Commissioner.

The access applicant did not seek to be joined and accepted the agency's amended decision that the disputed information was exempt. As the applicant confirmed that it did not wish to pursue access to the disputed information, the matter was resolved.

#### Acceptance by complainant that agency did not hold the requested documents

The complainants applied to the agency for documents in relation to their deceased son. The agency refused access to the requested documents pursuant to section 23(2) of the FOI Act, without identifying those documents, on the basis that it was apparent from the nature of the documents described by the complainants that they were exempt under clause 12(b) of Schedule 1 to the FOI Act.

During the course of the external review, the agency advised the Commissioner that it did not hold the requested documents. The agency agreed to inform the complainants that it did not hold the requested documents and why it did not hold the documents.

The complainants accepted the agency's explanation and did not wish to pursue access to the requested documents. As a result, the matter was resolved.

#### Concessions made by both parties

The complainant applied to the agency for copies of certain documents. The agency refused access to the documents and edited copies of documents (**the disputed information**) on the grounds that part of the disputed information was exempt under clause 10(1) of Schedule 1 to the FOI Act and the other part of the disputed information was exempt under clause 12(c).

After considering all the matters before her, including submissions by the parties, the Commissioner advised the parties that it was her preliminary view that most of the disputed information was not exempt under clause 10(1). The Commissioner also considered that the claim under clause 12(c) had been made out by the agency.

The agency agreed to give access to most of the disputed information claimed to be exempt under clause 10(1), but maintained that a small part of that information was exempt under clause 10(1).

The complainant agreed that the external review could be resolved on the basis that access was not sought to the small amount of information that the agency maintained was exempt under clause 10(1). As a result, the complainant was satisfied with the access provided and the matter was resolved.

### Revised deposit and estimate of charges

The complainant applied to a local government agency for a copy of recordings made at a council meeting. The agency gave the complainant an estimate of charges for dealing with the access application and required the complainant to pay a deposit under section 18(1) of the FOI Act. The complainant considered that the amount of the deposit was unreasonable.

Following inquiries made with the agency, the agency was informed that charges must be in accordance with the FOI Regulations and must be calculated in accordance with the principles set out in section 16 of the FOI Act. Accordingly, the agency was invited to reconsider its calculations and to consider a more reasonable deposit based on a revised estimate of charges.

The agency subsequently agreed to reduce the required deposit to a lower amount which the complainant accepted.

As a result, the complainant withdrew their application for external review and the matter was resolved.

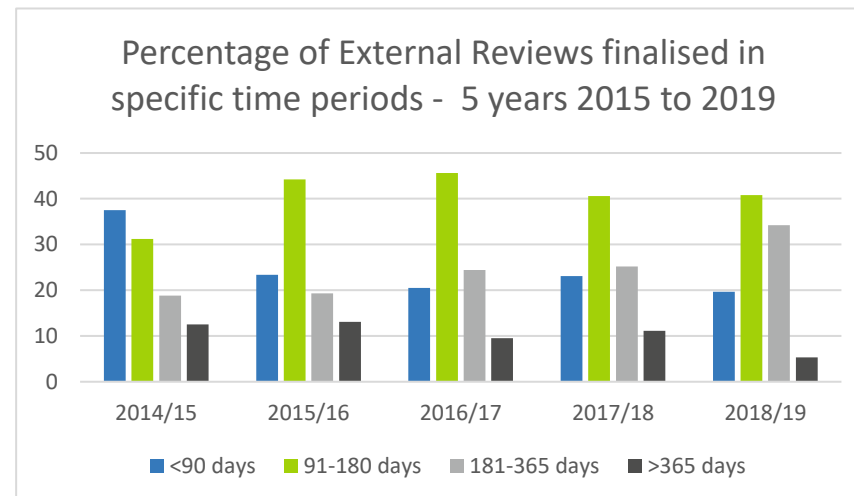
### *Satisfaction rate*

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.

Although this years' result of 82% is 3% under our target of 85%, participant satisfaction with the external review service increased by 2% from last year.

### *Timeliness*

As reported in previous years, reducing the time taken to finalise external review requests is an ongoing focus. The FOI Act sets out the manner in which proceedings must be conducted by the Commissioner which includes affording procedural fairness to the parties.





A new performance indicator is under consideration that will set targets for the percentage of external reviews finalised within certain time periods.

In addition, an early intervention pilot program is scheduled for trial in the new financial year. The purpose of the pilot program is to identify options for early resolution before allocation to an officer.

### *Decisions made by the Commissioner*

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

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 an external review are to be given a reasonable opportunity to make submissions.

The preliminary view will generally include the following information:

- the background to the request for external review (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. Acceptance of the preliminary view can result in a conciliated outcome, if the parties agree with the Commissioner's view.

However, 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, unless the decision is to stop dealing with a matter under section 67(1). It is the usual practice to identify all of the parties to the external review in the published decision, except in certain circumstances.

During the reporting period 12 applications for external review were finalised by formal published decision of the Commissioner, and a summary of some of those follow.

### Draft budget speech and budget papers

*Re Nahan and Department of Treasury* [2018] [WAICmr 8](#)

The agency refused the complainant access to draft versions of the 2017-18 Treasurer's Parliamentary Budget Speech and draft versions of the Treasurer's Budget papers. The A/Commissioner found that the disputed documents were exempt under clause 12(c) of Schedule 1 to the FOI Act on the basis that their public disclosure would infringe the privileges of Parliament.

The agency's decision was confirmed.

### Local government visitor logs

*Re McNally and Town of Victoria Park* [2018] [WAICmr 9](#)

Visitor logs for the agency for a specified period were found to be exempt under clause 3(1) of Schedule 1 to the FOI Act. The A/Commissioner was satisfied that the requested document would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. In this particular instance, the A/Commissioner considered that the public interest in favour of disclosure of the personal information in the requested document was not sufficient to outweigh the public interest in protecting the privacy of the individuals. The A/Commissioner considered that it was not

practicable for the agency to edit the requested document to delete the exempt information, pursuant to section 24 of the FOI Act.

The agency's decision was confirmed.

### Briefing note prepared for a Minister

*Re King and Minister for Transport; Planning; Lands* [2018] [WAICmr 10](#)

The complainant requested various documents relating to the town of Yarloop, Alcoa Wagerup and buffer areas around Alcoa Wagerup. The document in dispute was a briefing note attached to an email between the Minister's office and the Department of Planning, Lands and Heritage. The A/Commissioner was satisfied that the disputed document was prepared to brief a Minister in relation to a matter prepared for possible submission to Cabinet. On that basis the A/Commissioner found that the disputed document was exempt under clause 1(1)(d)(i) of Schedule 1 to the FOI Act.

The Minister's decision was confirmed.

### Documents relating to complaints to a local government agency about building applications

*Re Adam and City of Wanneroo* [2018] [WAICmr 12](#)

The complainant applied to the agency for access to documents relating to complaints he had made about

building applications lodged with the agency by a third party. The agency gave the complainant access in full to certain documents, access to edited copies of documents and refused access in full to one document. On external review, the complainant disputed the agency's decision to refuse access to documents under section 26 of the FOI Act on the basis that those documents cannot be found or do not exist; the agency's claim for exemption under clause 3(1) of Schedule 1 to the FOI Act (personal information); and the agency's decision to provide access by way of inspection to a document on the basis that providing a copy would breach copyright in that document.

The A/Commissioner was satisfied that the agency had taken all reasonable steps to find the documents the subject of the complainant's access application but that additional documents did not exist or cannot be found. On that basis, the A/Commissioner found that the agency's decision to, in effect, refuse access to documents under section 26 was justified. The A/Commissioner also found that the disputed information was exempt under clause 3(1) and that access to one document should be by inspection only because the document was subject to copyright (section 27(2)(c)).

The agency's decision was confirmed.

### Refusal of access when apparent from the description of the documents that they are exempt

*Re Palermo and Legal Profession Complaints Committee* [2018] [WAICmr 13](#)

The complainant applied for access to documents submitted to the agency by named private individuals. The agency refused access to the requested documents under section 23(2) of the FOI Act on the ground that it is apparent from the nature of the documents as described in the complainant's access application that they would all be exempt under clause 3(1) (personal information). The A/Commissioner found that it is apparent from the nature of the documents as described in the complainant's access application that, if any such documents exist, they would be exempt under clause 3(1) and that there is no obligation on the agency under section 24 of the FOI Act to give access to an edited copy of any of those documents.

The agency's decision was confirmed.

### Documents held by the Perth Mint

*Re Bennett & Philp Pty Ltd and Gold Corporation* [2019] [WAICmr 1](#)

The complainant applied for access to a variety of documents that broadly related to either the Perth Mint's position on the applicability or otherwise of GST on certain acquisitions by the Perth Mint, or to documents

relating to complaints – including to the Government of India – regarding the importation of gold mined in Australia into India. The agency refused the complainant access to all of the requested documents.

The A/Commissioner found that:

- certain documents were outside the scope of the complainant's access application;
- certain documents were exempt under clause 15(1)(b) of Schedule 1 to the FOI Act because their disclosure would reveal information about a transaction relating to gold or other precious metal received or held by the agency;
- certain documents were exempt under clause 10(4) as their disclosure would reveal information concerning the commercial affairs of the agency; disclosure could reasonably be expected to have an adverse effect on those affairs; and disclosure would not, on balance, be in the public interest;
- certain documents were exempt under clause 5(1)(c) because their disclosure could reasonably be expected to enable the identity of a confidential source of information in relation to the enforcement or administration of the law to be discovered;
- the agency's decision to neither confirm nor deny the existence of certain documents was justified on the basis that those documents, if they existed, would be exempt under clause 2(1)(a) because their disclosure could reasonably be expected to damage relations

between the Government and another government (namely, the Government of India) and their disclosure would not, on balance, be in the public interest; and

- it was not practicable for the agency to give the complainant access to edited copies of the disputed documents with exempt information deleted in accordance with section 24 of the FOI Act.

The agency's decision was varied.

This is the first published decision on the exemption in clause 15 of Schedule 1 to the FOI Act.

#### Community Development Plan and annual reports submitted by a mining company

*Re Gaffney and Department of Jobs, Tourism, Science and Innovation [2019] [WAICmr 3](#)*

The complainant applied to the agency for access to the Community Development Plan and annual reports submitted by a mining company, as referred to in a particular State Agreement (**the Agreement**). The agency refused access to the documents on the ground that the documents were exempt under clause 4(3) of the FOI Act as disclosure would reveal information about the business, professional, commercial or financial affairs of a person, and disclosure 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.

After consulting with a substantial number of third parties named in the documents, the A/Commissioner found that disclosure would reveal information about the business, professional, commercial or financial affairs of third parties, but was not persuaded that disclosure would have an adverse effect on those affairs. Further, the A/Commissioner did not consider that disclosure would prejudice the future supply of information of that kind to the Government or an agency, as the mining company was required to provide information of 'that kind' to the agency, under the Agreement.

The A/Commissioner set aside the agency's decision to refuse access to the documents and found that they were not exempt under clause 4(3) of Schedule 1 to the FOI Act.

#### **Documents that cannot be found or do not exist**

*Re Humphreys and Forest Products Commission* [2019]  
[WAICmr 5](#)

The complainant claimed that the agency had not identified all documents within the scope of his application. The A/Commissioner recognised that applicants seeking to exercise their rights of access under the FOI Act must, to some extent, rely on the integrity of the searches conducted by the relevant agency. She also recognised that, in some

circumstances, an applicant may be skeptical about the adequacy of an agency's efforts to meet its obligations under the FOI Act. However, she considered that there were insufficient grounds to expect that additional documents existed within the scope of the complainant's access application and that, in any event, the agency had taken all reasonable steps to find additional documents and that they either cannot be found or do not exist.

Accordingly, the A/Commissioner did not require the agency to make any further inquiries or conduct any further searches and found that the agency's decision to refuse access to documents pursuant to section 26 of the FOI Act was justified.

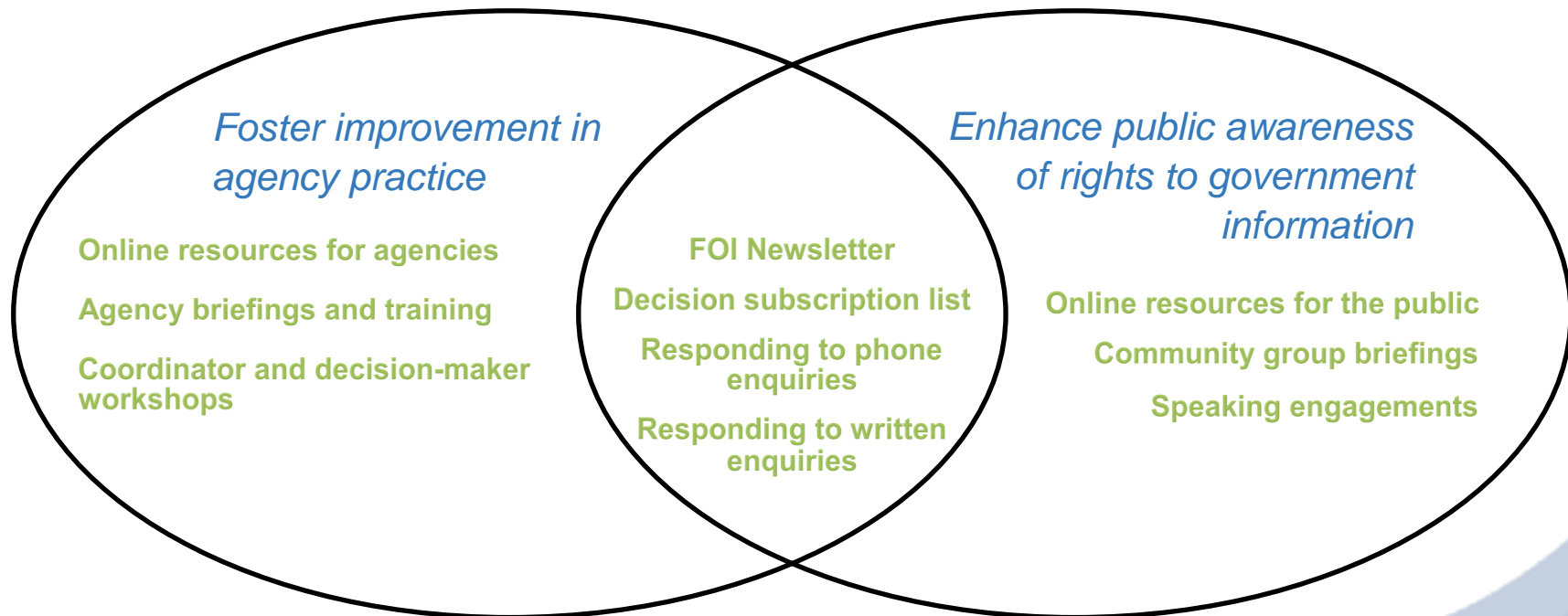
The agency's decision was confirmed.

## Advice and Awareness

### STRATEGIC GOALS:

- *Foster improvement in agency practice*
- *Enhance public awareness of rights to government information*

The OIC seeks to further its strategic goals by delivering training and presentations and providing written resources. Key aspects of our advice and awareness activities are described below. Tables [8](#) and [9](#) in the OIC Statistics lists all the training and presentations undertaken during the year. Table [11](#) outlines the current list of publications.



### Training and briefings for individual agencies

Effective implementation of the objects of the FOI Act rely on capable agency decision-makers and an environment in which FOI is a valued part of an agency's operations. An understanding of agency obligations under the FOI Act should form part of any public sector employee's competency. The OIC visits agencies to provide briefings for agency staff to assist with this.

In some cases, decision-making training is provided offsite to agencies when the need arises depending on the resources of the OIC. Where possible agency decision-makers are encouraged to attend the training at OIC premises.

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"Always very helpful when contacted by the phone and willing to listen and provide guidance. An information session conducted by the Acting Information Commissioner was also very well received by all staff who attended and helped to gain a clearer understanding of their own FOI obligations."

*Survey response*

### FOI Coordinators and Decision Writing Workshops

The FOI Coordinators Workshop is the key training provided by the OIC and several workshops are held each year. 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

**"The provision of real world examples of types of FOI cases relating back to the elements of the FOI Act to illustrate best the intent of the FOI Act and how FOI coordinators can work best with the applicant to achieve practicable outcomes."**

*Workshop participant survey response to question about the benefits of the FOI Coordinators Workshop*

ensure that their agency's processes and policies continue to accord with best practice.

The Decision Writing Workshop aims to build on the 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. A good notice of decision also demonstrates an appropriate decision process. Several Decision Writing workshops are held each year.

In 2017, it was decided to reduce the number of workshops offered in 2018, due to resourcing concerns. However, during 2018, it became evident that the reduced number of workshops was not keeping up with demand and additional workshops were scheduled. In 2019, the OIC has returned to its previous practice of delivering at least one workshop each month, except in January and December. The number of participants attending each workshop has ranged between 13 and 25 agency officers. The feedback received about our

workshops is consistently positive. It is recognised that participants have a variety of experience and needs and 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.

### Briefings for community groups

This year OIC participated in two briefings for Aboriginal service providers and Elders providing information about a number of independent agencies. These briefings were organised by the Ombudsman Western Australia. The sessions included representatives from the Ombudsman WA, Commonwealth Ombudsman, Telecommunications Industry Ombudsman, Australian Financial Complaints Authority, the Energy and Water Ombudsman and the Health and Disability Services Complaints Office. There was an opportunity to talk with the participants about how to engage with our agencies and the OIC in order to access documents. It was particularly valuable to hear from Aboriginal leaders about issues that Aboriginal people experience in dealing with government agencies.



Invitations were also accepted to speak about freedom of information to legal practitioners about the role and practice of freedom of information. Legal practitioners have clients from both the community and agencies that seek advice about freedom of information matters.

Briefings for community members and legal practitioners can equip advocates with the skills to make effective access applications. While briefings include information about rights and processes 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 and their representatives are realistic in their expectations of what an agency can provide.

### Speaking engagements

The Commissioner and other OIC staff have been guest lecturers at a number of WA Universities introducing students to important legal issues associated with freedom of information legislation.

### FOI Newsletter

The newsletter 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.

Five newsletters were published this financial year, and is now published quarterly. Subscribers to the newsletter also receive alerts when decisions of the Commissioner are published on our website. Subscriptions can be registered from our [website](#).



## Online resources

Wherever possible the OIC's resources are published on our 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.

The OIC maintains a suite of online guides for agencies to assist them in meeting their obligations under the FOI Act and for members of the public to provide guidance about making FOI applications and understanding the FOI process.

Short guides on common issues or questions regarding FOI are available from our home page with drop-down menus for members of the public and for agencies. More detailed publications are available from our publications page, which is accessible from our home page under 'Other Resources'.

The FOI Coordinator's Manual, which is used for the FOI Coordinator's workshop, is also available online. It is a comprehensive reference tool for FOI Coordinators and is intended to be an evolving resource.

## 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 all decisions.

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](#) under Western Australia case law. AustLII provides a free online database of Australasian legal materials.

People can subscribe to receive notification of a new decision of the Commissioner at our [website](#).

## Responding to enquiries

This year the OIC dealt with 1,286 written, phone and in-person requests for advice and misdirected requests for documents.

The OIC provides general assistance to 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 outside the FOI

Act, where appropriate, and in accordance with the FOI Act when necessary. Agency officers are assisted to understand their obligations under the FOI Act.

The OIC does not provide legal advice and does not provide specific rulings on particular issues or sets of facts when the matter is not before the Commissioner on external review. Providing guidance to both applicants and agencies without crossing this line can be a balancing act. The OIC provides a number of readily available tools to support agencies and the community, and to promote the objects of the FOI Act.

### Agency FOI Reference Group



The purpose of the Agency FOI Reference Group (**AFRG**) is to promote and advocate for good FOI practice in agencies. The meetings of the group continue to provide an opportunity for the OIC to hear directly about current issues facing agencies with respect to freedom of

information. The AFRG met three times during the period and is made up of key staff of the OIC and FOI practitioners from ten agencies that are representative of the different agency types in the sector. These discussions are an important contributing factor to the advice and awareness activities of the OIC. Members of the AFRG are encouraged to share information from meetings of the group with their staff and similar agencies and to feed information back from those agencies to the group.

## Our workplace

**STRATEGIC GOAL:** *Build the capacity of our people*

### *Flexible working arrangements*

The OIC has been working on improving our policies supporting flexible working arrangements. We recognise that the availability of flexible working arrangements is important for creating diverse workplaces and supporting staff with caring responsibilities. The ability to work remotely away from the office is one aspect of flexible work practices.

Providing remote access for OIC staff is, however, challenging for the following reasons:

- the content of each external review file is highly confidential;
- we do not yet have the facility to securely receive agency documents electronically;
- we prohibit our hard copy files being removed from the office; and
- we do not yet have remote electronic access to our complaints management or document management systems.

As part of the GovNext initiative, the OIC has recently switched to a cloud-based server and this move, once bedded down, is expected to provide alternative solutions to accessing our systems remotely. We are also looking at updating staff computers to portable alternatives and engaging with secure document transfer software.

To provide remote access to documents electronically in future, consideration also needs to be given to broader issues such as available resources (staff and scanning capabilities) and our current records management policies. The OIC's Recordkeeping Plan is due for review in December 2019 and these issues will be considered as part of that review. This may also coincide with the purchase of new document management software.

Despite these issues, a working from home policy has been finalised that sets out relevant considerations for staff wanting to work from home.

### ***Leave***

Our existing leave policy was updated to reflect public sector requirement that long service leave is taken within two years of accrual, and to include the availability of family domestic violence leave.

### ***Social club***

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. Volunteering in community events is encouraged and is an area staff have agreed to build on.

### **My Marathon – Heart Foundation**

\$447.00 was raised by participating staff walking a total of 42.2kms each during the month October 2018. All participants accomplished their quota in lunchtime walking groups around the city, and individually in their personal time.

By spreading the distance over a full month, staff who would otherwise not be able to participate by walking the distance in a single marathon were able to join in.

### **Law Week Walk for Justice**

On 14 May 2019, for the fourth 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 raises funds for the charity Law Access, which matches individuals and community organisations seeking legal assistance with pro bono lawyers.

OIC staff raised \$300 which contributed to the overall total of just over \$80,000.

### **Minds Count Foundation**

The OIC is a signatory to the Workplace Wellbeing Guidelines for the Legal Profession developed by the Tristan Jepson Memorial Foundation (now called Minds Count). 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.

The Guidelines were originally written for the legal community, but are certainly adaptable to any workplace and are available on the Minds Count [website](#).