



# Office of the Information Commissioner

*Freedom of information for Western Australia*



## **ANNUAL REPORT 2018/2019**

# Disclosures and Legal Compliance

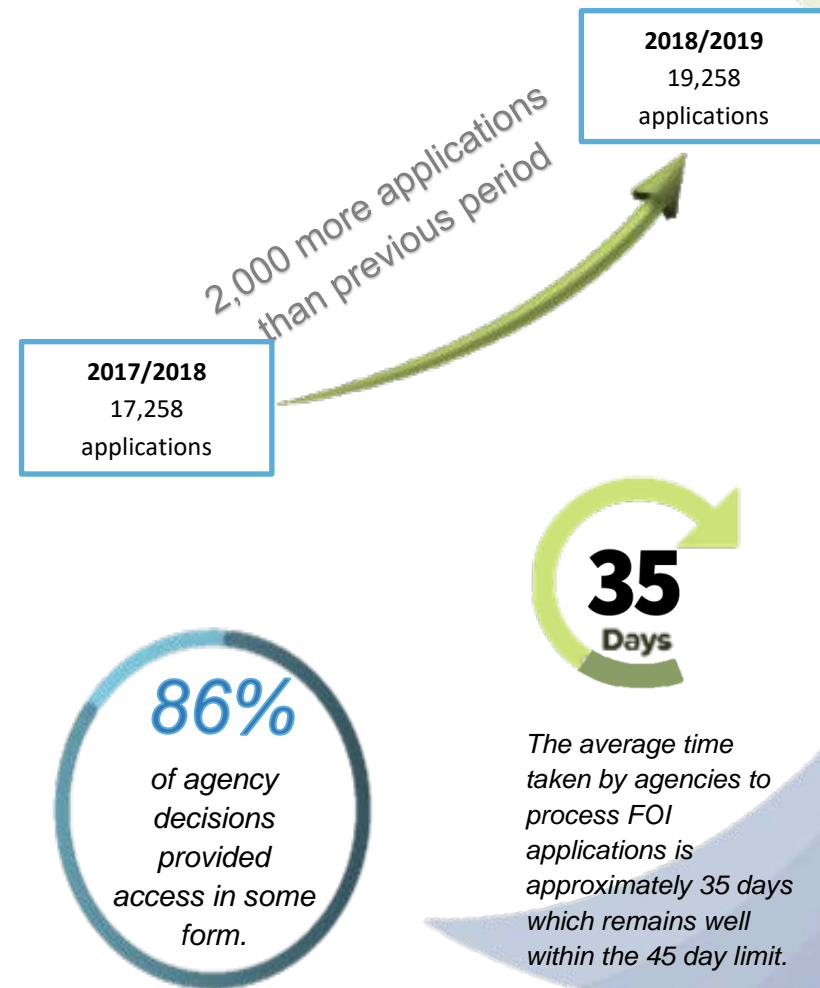
## FOI in the sector

Section 111 of the FOI Act requires that the Commissioner's annual report to 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 2018/19 is set out in detail in the statistical tables in the [Agency Statistics](#) chapter of this report. The following is an overview.

The total number of applications made under the FOI Act to agencies in 2018/19 was 19,258. This represents a significant increase of 2000 applications (approximately 11.5%). The increase in applications appears to be mainly attributable to an influx of applications to departments and to the health sector.

Although there has been an increase of almost 7% in matters coming to the OIC on external review, as a proportion of access applications made to agencies it remains only a small percentage of such matters (less than 1%). Trends and issues faced by agencies are identified through the external review process or via our Advice and Awareness service.

## Sector highlights



How agencies manage their FOI responsibilities and information disclosure generally can impact on the volume of matters dealt with by this office.

The OIC endeavours to provide agencies with the tools to promote proactive disclosure and reduce the impact FOI can have on agency resources.

This year all agencies except one were able to provide the required statistical data. This is the highest ever response rate. Cooperation from agencies in providing these statistics each year is greatly appreciated.

Tables with the detailed responses from each individual agency are set out at [Agency Statistics](#) in this report.

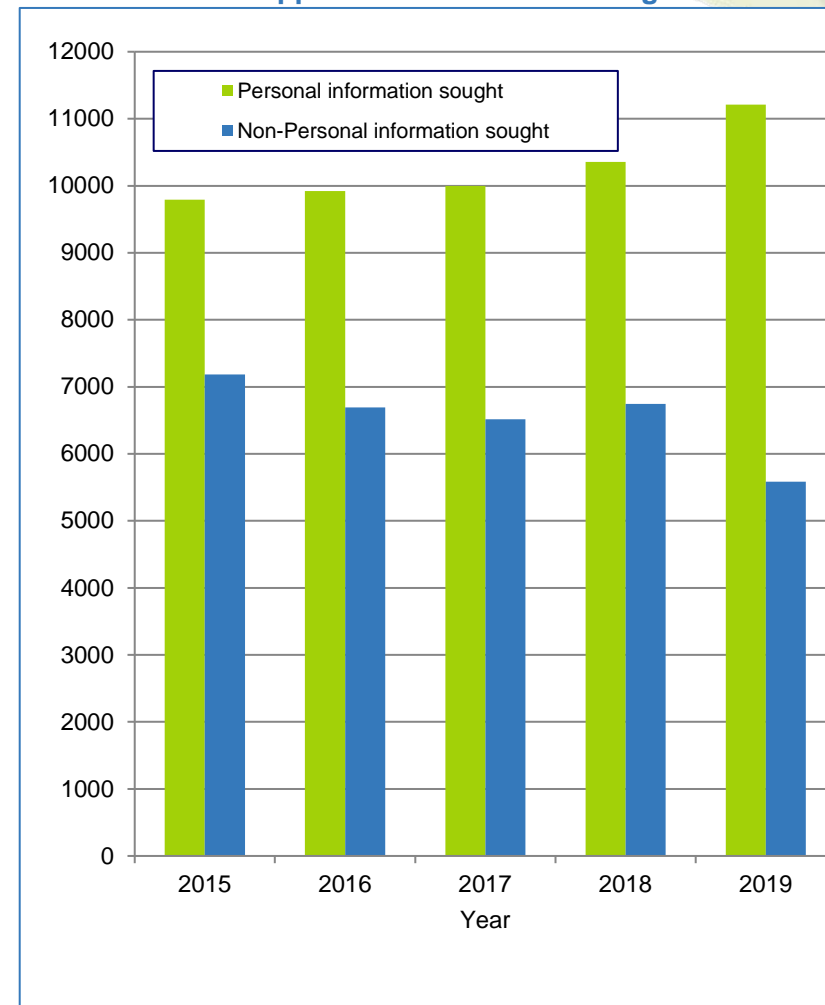
### *Agency Decisions*

As can be seen in [Table 14](#), of the decisions on access made by Ministers in the reporting period, two were to give full access; 46 were to give access to edited copies of documents; and three decisions were to refuse access. In three cases no documents could be found.

[Table 14](#) also reveals that 15,991 decisions on access were made by State government agencies (exclusive of local government agencies and Ministers) in 2018/19. Importantly, 86.2% of those decisions were to the effect that access in some form was given (89.6% in 2017/18). By way of further detail:

- 48.5% of decisions resulted in the applicant being given access in full to the documents sought (49.5% in 2017/18);

**Figure 1**  
**Number of applications decided – all agencies**

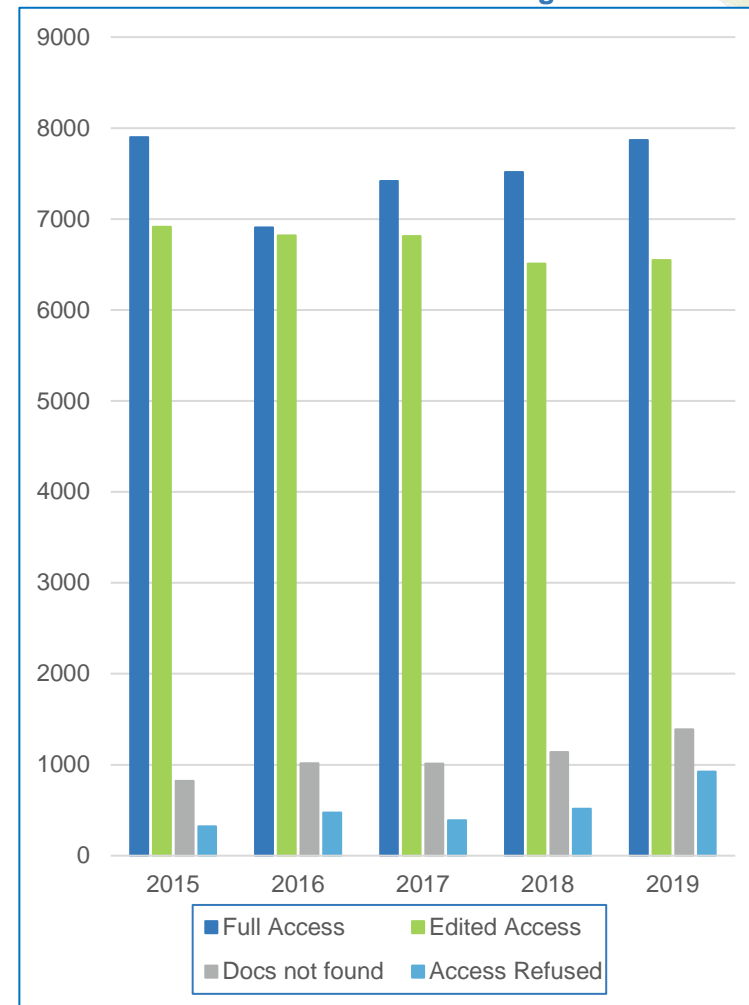


- 37.4% of decisions resulted in the applicant being given access to edited copies of the documents sought (39.5% in 2017/18);
- 0.4% of decisions resulted in either access being given but deferred, or being given in accordance with section 28 of the FOI Act (by way of a medical practitioner) (0.6% in 2017/18);
- In 8.31% of applications the agency claimed the requested documents either did not exist or could not be found (7.2% in 2017/18);
- 5.49% of the decisions made were to refuse access (3.2% in 2017/18).

**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 5,367 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 that exemption to protect personal privacy.

**Figure 2**  
Outcome of decisions – all agencies

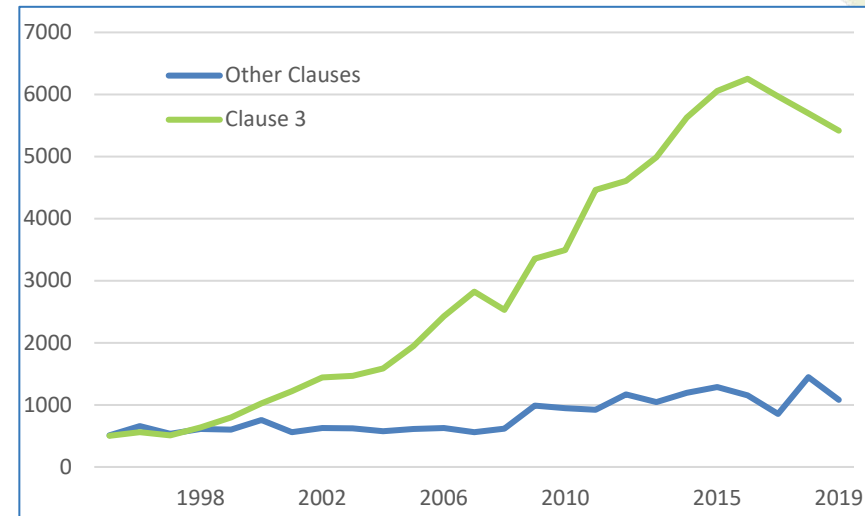


The next most frequently claimed exemptions were:

- clause 4, which relates to certain commercial or business information of private individuals and organisations (192 times);
- clause 5, which relates to law enforcement, public safety and property security (182 times);
- clause 7, which protects from disclosure documents which would be privileged from production in legal proceedings on the ground of legal professional privilege (142 times);
- clause 8, which protects confidential communications in some circumstances (120 times); and
- clause 14, which relates to information protected by certain statutory provisions (112 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). See [Table 15](#) for further detail.

Figure 3 – Use of exemption clauses



## Internal review

Agencies received 307 applications for internal review of decisions relating to access applications during 2018/19 (see [Table 16](#)). This represents approximately 1.8% of all decisions made and approximately 33% 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 203 occasions, varied on 77 occasions, reversed on 12 occasions and the application for internal review was withdrawn on 12 occasions.

## Amendment of personal information

Agencies received 20 applications for amendment of personal information during the year (see [Table 17](#)). A total of 18 applications were finalised, including some that were received in the previous period. These were dealt with as follows:

- information was amended on six occasions;
- not amended on nine occasions; and
- amended, but not as requested, on three occasions.

None of the applications received were subsequently withdrawn.

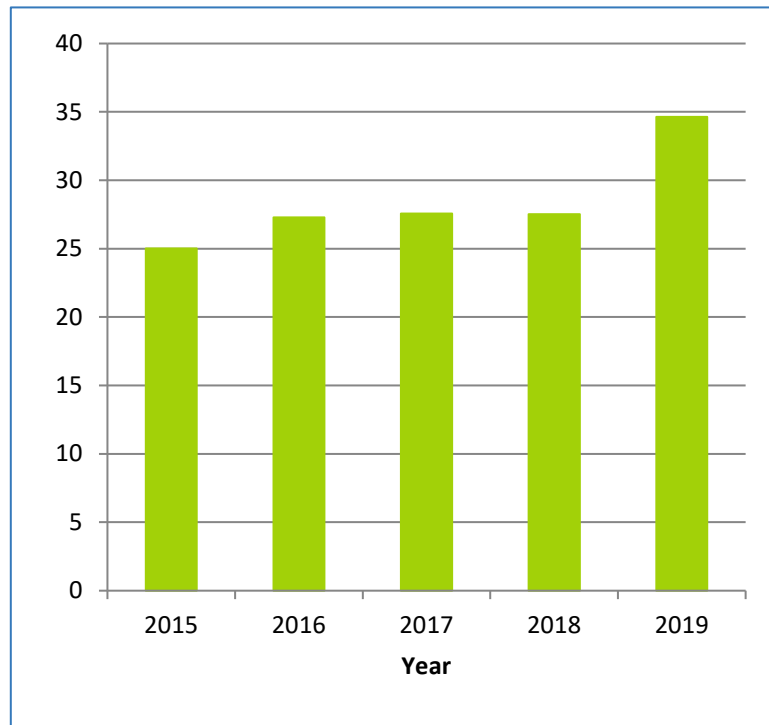
Of the four applications for internal review of decisions relating to the amendment of personal information dealt with during the year, three decisions were made to confirm the original decision and one decision was varied (see [Table 18](#)).



### Average time

The average time taken by agencies to deal with access applications (34.63 days) is higher than the previous year (27.53 days) but remains well within the maximum period of 45 days permitted by the FOI Act.

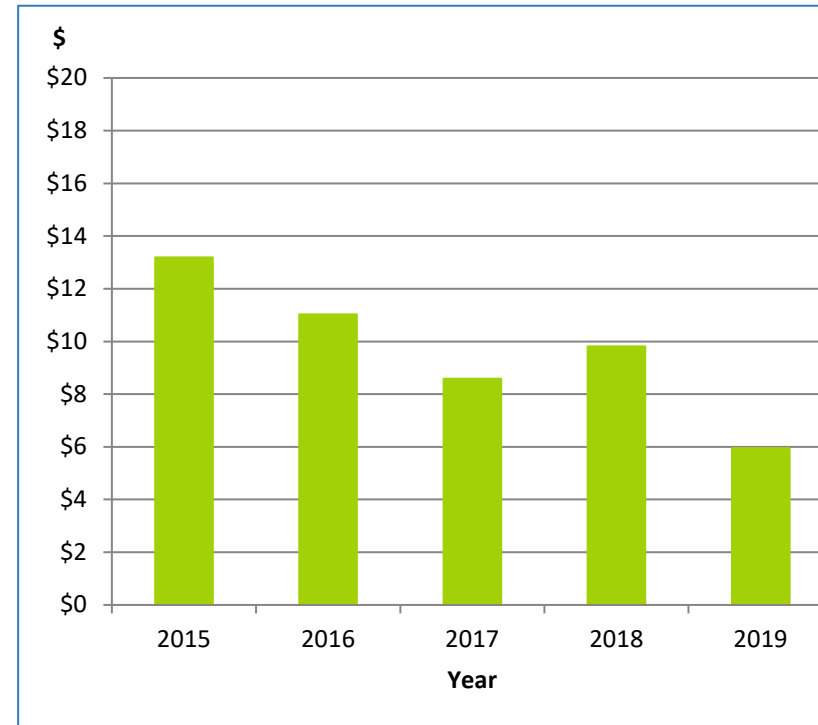
**Figure 4**  
Average days – all agencies



### Average charges

The average amount of charges imposed by agencies for dealing with access applications decreased to \$5.95 (\$9.81 in 2017/18).

**Figure 5**  
Average charge for access – all agencies



### ***Access applications not dealt with in the permitted period***

From the financial year 2017/18, agency statistical returns have required agencies to report on the number of access applications not dealt with within the permitted period.

The term 'permitted period' is defined in section 13(3) of the FOI Act as:

*...45 days after the access application is received or such other period as is agreed between the agency and the applicant or allowed by the Commissioner under subsection (4) or (5).*

As outlined previously, this data is collected to allow the OIC to contribute to the National Metrics Dashboard, which compares access jurisdictions within Australia.

For the 2017/18 reporting year, agencies reported 9.4% of access applications were not dealt with in the permitted period. For the current year, agencies report that 10.5% of access applications have not been dealt with in the permitted period. However, the data shows that 65% of agencies dealt with all their access applications in the permitted period.

## **Financial disclosures**

- All services provided by the OIC are free of charge. The fees and charges prescribed by the FOI Act for making an FOI application are paid directly to the agency receiving the application.
- The OIC has no capital works projects.

- There were no workers' compensation claims made during the reporting period.
- There was one instance of a corporate credit card being used for private expenses. This was an unintentional error which occurred when the officer was registering online for a membership and selected the corporate credit card details instead of their own personal card. The matter was brought to the attention of the cardholder at the time of reconciliation and the officer provided an explanation to the Commissioner. The correct details were provided to the supplier immediately. Three payments totalling \$145.46 were deducted from the corporate card before the supplier record was updated and the full amount has been repaid by the staff member.

### ***Employment and industrial relations***

#### Staff profile

	2019	2018
Full-time permanent	8	7
Full-time contract	3	1
Part-time measured on a FTE basis	2	2.2

(Includes 1.6 FTE on secondment/leave without pay)



## Staff movements

Six new appointments were made during the year.

1. An appointment was made to our Clerical Officer role after the substantive occupant accepted a secondment opportunity elsewhere for 12 months.
2. The Principal Legal Officer and Senior Legal Officer roles had both been occupied in an acting capacity but following concurrently run recruitment processes, those positions were substantively filled in January 2019.
3. A six month contract appointment was made in February 2019 to occupy the Paralegal position while the substantive occupant took leave without pay to take up an alternative employment opportunity.
4. A new Administrative Support Officer position was created and, following a full recruitment process, was filled in February 2019.
5. An appointment was made to a vacant Investigations/Legal Officer position during the year, and the occupant commenced in July 2019.

## *Staff development*

### Continuing Staff Development (CPD)

The OIC employs legal practitioners who, under section 36(3) of the *Legal Profession Act 2008*, are taken to hold local practising certificates. Those legal practitioners maintain and broaden their legal knowledge by obtaining CPD points in accordance with the *Legal Profession Rules 2009*. The OIC

maintains a register of CPD points attained by each legal staff member.

### Other professional development

Staff are encouraged to attend various learning opportunities that arise and over 20 events were attended by various staff members during the year.

In addition to seminars and workshops, when relevant the OIC provides the opportunity for staff to achieve qualifications to promote career progress. This year an officer received national mediation accreditation a skill which will assist our external review conciliation program.

### Re-classification of Complaints Coordinator

Following a comprehensive independent review process conducted by an external HR consultant, the A/Commissioner decided to reclassify the position of Complaints Coordinator (Level 7). The role has been retitled to Manager Complaints (Level 8).

## **Governance disclosures**

- No senior officers, or firms of which senior officers are members, or entities in which senior officers have substantial interests, had any interests in existing or proposed contracts with the OIC other than normal contracts of employment service.
- The OIC has no boards or committees, and therefore no remuneration costs in this regard.

### ***Expenditure on advertising, market research, polling and direct mail***

No expenditure was spent on advertising agencies, polling organisations, direct mail organisations or media advertising organisations. The following expenditure was spent on market research.

Paid to	Purpose	Amount
Woolcott Research Pty Ltd	Community attitudes survey	\$8,300

### ***Conflicts of interest***

The OIC maintains a Conflicts of Interest Register. During the reporting period, four potential conflicts were registered by the officer with the potential conflict. Appropriate measures were put in place to deal with the potential conflicts of interest.

### ***Gifts register***

The OIC's gifts register is available on our [website](#). Four gifts were registered as accepted. Gifts for services provided (predominantly for briefings or speaking engagements) are generally accepted and shared within the office. Gifts that are promoting services or where a discretionary authority exists with the gift recipient (eg purchasing discretion) are declined.

### ***Disability Access and Inclusion Plan***

The OIC is committed to ensuring that people with disability, their families and carers are able to fully access the range of services and facilities of the office. The OIC will, whenever required, consult with people with disability, their families and carers and disability organisations to ensure that barriers to access and inclusion are addressed appropriately.

A yearly progress report on the initiatives in the Plan has been lodged with Department of Communities. Ten of the 15 strategies were previously implemented and the drafting of a complaints policy that provides lodgement accessibility is almost complete.

A five year review of the Plan was also conducted in the year and submission of the new Plan to the Department of Communities is scheduled for August 2019.

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

### ***Compliance with Public Sector Standards and ethical codes***

The OIC operates under an established code of conduct that references the WA Public Sector Code of Ethics. The OIC also has an employee grievance resolution policy in place. All new staff are provided with a copy of the Code and grievance policy as part of an induction pack, and these documents are also available to all staff on the OIC's knowledge management system.

Improving our policies and procedures is always encouraged through open discussion and regular reviews.

### ***Occupational health, safety and injury management***

The OIC is committed to an occupational safety and health and injury management system which has been established by the OIC for the benefit of all staff. A documented injury management system is in place which is compliant with the *Workers' Compensation and Injury Management Act 1981* and the associated *Workers' Compensation Code of Practice (Injury Management) 2005*. This system has been formally introduced to staff and is made available through the OIC's knowledge management system.

Relevant staff are conversant with occupational health and safety and injury management policies, procedures and programs in order to meet legislative requirements, and are provided the opportunity to report any issues at the monthly staff meetings via a standing agenda item for this purpose. All injury management targets have been met (see [Table 12](#)). There were no reported injuries or fatalities, and relevant staff have attended OSH and injury management training.

An assessment of the OIC's occupational safety and health management system is scheduled for 2019/20.

### ***Records Management***

The OIC's recordkeeping systems have been evaluated and considered to be suitable to the size of the office. During the last review of our recordkeeping plan provided to the State Records Office, areas of improvement were identified in respect of disaster recovery and archiving/disposal. No further progress was made during 2018/19 regarding these issues, and they remain on the agenda.

New staff are provided with a copy of the OIC's Recordkeeping Manual and policy at induction. General staff responsibilities in respect of recordkeeping practices are minimal (other than ensuring they retain relevant records) as the filing protocols are centralised to corporate services staff.