Freedom of Information Act 1991



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This annual report has been issued pursuant to Section 54 of the *Freedom of Information Act 1991*.

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The *Freedom of Information Act 1991* provides a formal process for the public to request information from South Australian Government agencies. It is a key component in ensuring open and accountable government.

The Act is committed to the Minister for Administrative Services who is required by Section 54 to report on its administration.

A copy of the report is required to be laid before both Houses of Parliament.

This report covers the year ended 30 June 2002.

Hon Jay Weatherill MP

MINISTER FOR ADMINISTRATIVE SERVICES

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SUMMARY

State Government

This year there were 9,427 freedom of information (FOI) applications received by State Government agencies, representing an increase of 19% over the previous year. Requests for non-personal information increased by 30%, double the corresponding 15% increase in requests for personal information. There was an overall increase in FOI applications of 10%.

The figures relating to the time taken to deal with applications and the number of unfinished applications are of particular significance. Specifically, 95% of applications were finalised within the 45-day time period, and there was a 56% decrease in the number of unfinished applications.

For the first time, agencies were asked to separate statistics for unfinished applications into; those unfinished but still within 45 days, and those unfinished and over 45 days. Only 15% of unfinished applications at 30 July 2002 were past the 45 day time period, and 75% of these were for requests for personal information.

Other key data relating to State Government agencies indicated:

- # 81% of finalised applications were granted full access
- # Of those agencies which received one or more applications, 54% received 10 or less
- # 50% increase in refusals on the basis that the document was exempt
- # The cost associated with processing applications made to State Government agencies is likely to be no less than \$1.5m.

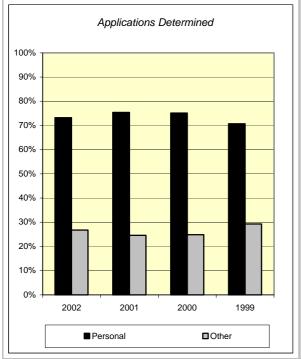
Local Government

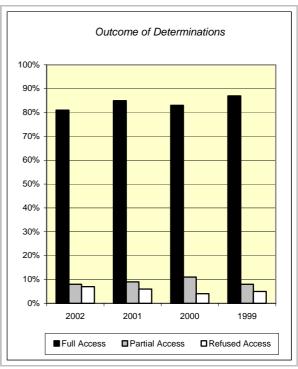
This year there were 129 FOI applications received by Local Government. The volume of applications received by Local Government has remained constant over the past two years.

Key data relating to Local Government agencies indicated:

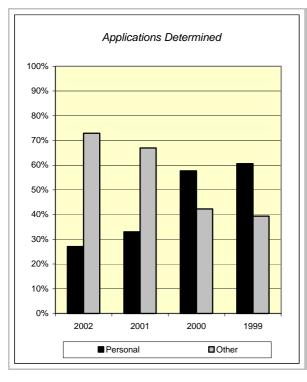
- # 97% of applications are finalised within 45 days
- # 80% of finalised applications were granted full access
- # Of those agencies which received one or more applications, 82% received less than 10
- # Reasons for refusing or restricting access have remained constant over the past two years.

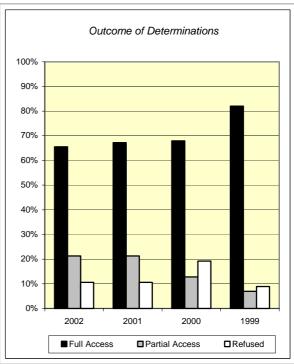
State Government





Local Government





1 State Government Annual Statistical Returns

1.1 Introduction

1.1.1 The Freedom of Information Act 1991

Freedom of information legislation was introduced in South Australia in 1991, and commenced operation on 1 January 1992.

The objectives of the Freedom of Information Act 1991 (FOI Act) are:

- 3(1) to extend, as far as possible, the rights of the public
 - (a) to obtain access to information held by government; and
 - (b) to ensure that records held by government concerning the personal affairs of members of the public are not incomplete, incorrect, out-of-date or misleading.

As the Amendment Act commenced operation on 1 July 2002, or the beginning of the 2002/2003 reporting year, the content of this report is based on the administration of the Act prior to 1 July 2002.

1.1.2 **Scope**

The FOI Act applies to South Australian government agencies. Agency is defined in the FOI Act as:

- a) a Minister of the Crown; or
- b) a person who holds an office established by an Act; or
- c) a body corporate (other than a council) that -
 - i) is established for a public purpose by, or in accordance with, an Act;
 and
 - ii) comprises or includes, or has a governing body that comprises or includes, a Minister of the Crown or a person or body appointed by the Governor or a Minister of the Crown; or
- d) an unincorporated body established by the Governor or a Minister; or
- e) an administrative unit under the Government Management and Employment Act 1985; or
- f) the Police Force of South Australia; or
- g) a person or body, controlled by the Crown, or an instrumentality or agency of the Crown, declared by regulations to be an agencybut does not include an exempt agency.

Exempt agencies are listed in Schedule 2 of the FOI Act. Agencies may also be declared exempt by regulation. A list of exempt agencies is attached in Appendix C.

Prior to 1 July 2002 South Australian universities fell outside the definition of 'agency' contained within the FOI Act. However, as the definition of agency was broadened by the Amendment Act, all South Australian universities after 1 July 2002 are bound by the provisions of the FOI Act.

1.1.3 Reporting Relationship

Administration of the FOI Act is vested with the Minister for Administrative Services, Hon Jay Weatherill MP.

1.1.4 Support

State Records of South Australia undertakes the day-to-day administration of the FOI Act. State Records is a business unit of the Department for Administrative and Information Services (DAIS) responsible to the Executive Director Policy, Planning and Community Services.

In administering the FOI Act, State Records performs the following functions:

- # provision of advice to members of the public on their rights of access to, and amendment of, records held by government
- # conducts training sessions for State and Local Government agencies
- # provision of advice on the operation and administration of the FOI Act to agencies
- # provision of advice on legislation which may impact on access or amendment provisions
- # keeping the Minister informed of relevant issues.

1.1.5 Freedom of Information Line

State Records provides an information service for members of the public seeking advice on how to use the FOI Act to access information held by state and local government.

State Records also provides advice to agencies in relation to the operation and administration of the FOI Act.

1.1.6 Training and Awareness

During the period 1 July 2001 and 31 December 2001, 34 people attended the four courses conducted by State Records on the operation of the FOI Act. In January 2002 FOI training was suspended pending development of new training required as a result of the Amendment Act.

In anticipation of the changes to the FOI Act, State Records called for expressions of interest for the development and delivery of the accredited FOI officer training.

Following evaluation of the expressions of interest received, the Australian Government Solicitor was selected to develop and deliver the accredited FOI officer course. The new course was delivered 11 times from May to June 2002, with a total of 219 people attending.

1.1.7 Publication Requirements

Up to 1 July 2002 Section 9 of the FOI Act required agencies to update and publish both an information statement and an information summary. As a result of the Amendment Act, agencies are now only required to publish an information statement.

The information statement, which must be updated each year, must contain:

- # details of the structure and functions of the agency
- # a description of the ways in which those functions affect members of the public
- # a description of any arrangement which exists to enable members of the public to participate in the formulation of the agency's policy and the exercise of the agency's functions
- # a description of the various kinds of documents usually held by the agency and how to access them, and agency contact details.

Information statements must be published in an agency's annual report or on its web site.

1.2 The Environment

1.2.1 Freedom of Information (Miscellaneous) Amendment Act 2001

On 25 July 2001 the Hon Robert Lawson MP, Minister for Administrative and Information Services introduced the *Freedom of Information (Miscellaneous) Amendment Bill 2001* in the Legislative Council. The Bill was in part a response to the report of the Legislative Review Committee into the FOI Act tabled on 4 October 2000.

Of the amendments made to the FOI Act, the two most significant were the requirement that agencies appoint an accredited FOI officer and the reduction in time frame from 45 days to 30 days to deal with applications made under the Act.

The accredited FOI officer is defined as an agency officer who:

- # has completed training approved by the Minister
- # has been designated in this role by the Principal Officer of the agency
- # holds a senior position in the agency.

In recognition of the fact that in smaller agencies delegation below the principal officer may be unnecessary or impracticable, the accredited FOI officer can be the principal officer. The role of the accredited FOI officer is to deal with applications for access or amendment made under the Act.

Importantly the definition of agency was broadened to align, as far as possible, with that of the State Records Act and now includes local government and universities, resulting in both these types of agencies being bound by the FOI Act after 1 July 2002.

1.2.2 Local Government

The Amendment Act comes into operation on 1 July 2002. The Amendment Act amends the *Local Government Act 1934* by repealing Part VA, resulting in local councils being brought within the scope of the FOI Act.

The statistics gathered from Local Government for this annual report relate to the handling of FOI applications prior to 1 July 2002.

1.2.3 Regulations made under the FOI Act

1.2.3.1 Fees and Charges

Fees and charges were first set by regulation in December 1991. They remained at the same level until Cabinet approved an adjustment by regulation under the FOI Act. Those regulations took effect on 1 July 2001.

A further increase has been approved and these new regulations are due to take effect on 1 July 2002.

1.2.4 The Workers Rehabilitation and Compensation Act 1986

Section 107(b) of the *Workers Rehabilitation and Compensation Act 1986* was introduced on 13 April 2000 to provide a mechanism for all claimants under South Australian workers' compensation schemes to have access to their claims files and relevant claims information.

Due to the introduction of Section 107(b) the number of FOI applications received by the WorkCover Corporation dropped from 118 in 1999-2000 to 34 in 2000-01. In 2001-02 there was a further reduction to 20 FOI applications received.

Details of applications made under section 107(b) of the Workers Rehabilitation and Compensation Act are available from the WorkCover Corporation.

1.3 Annual Statistical Returns

All State Government agencies, including statutory authorities and government business enterprises are required to complete a freedom of information annual statistical return.

A detailed analysis of these statistical returns is presented in the following sections.

1.4 Outcome of Applications made under the *FOI Act*

1.4.1 Volume of Applications

The combined results of the annual statistical returns show there were 9,427 FOI applications made during the reporting year. This number includes both new applications and applications brought forward from the previous year.

The majority of agencies receive less than ten FOI applications per year. Further, 37% of agencies reported receiving no applications for 2001-01.

The scale and complexity of these applications can vary enormously. Some applications involve the consideration of a few routine documents, whereas other applications can involve consideration of many documents, consultation with third parties and deletion of exempt matter.

The annual report for the 1999-00 reporting period analysed the top five agencies in terms of volume of applications received. The analysis of the same five agencies has been continued for each subsequent year. This year, however, a sixth agency has been included. The Lyell McEwin Hospital has experienced a 34.6% increase in the amount of FOI applications received and has superseded the Flinders Medical Centre in terms of volume of applications received.

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Agency	01/02	00/01	99/00	% increase / decrease (2001-02)	% increase / decrease (2000-01)
South Australian Police	2451	2038	1995	20.3% á	2.0% á
Royal Adelaide Hospital	1996	1600	1491	24.8% á	7.3% á
Queen Elizabeth Hospital	832	707	690	17.7% á	2.5% á
Women's & Children's Hospital	692	465	862	48.8 %á	46.0% â
Lyell McEwin Hospital*	622	462	393	34.6% á	17.5% á
Flinders Medical Centre	580	519	461	11.8% á	12.6% á

In 2000-01 the Women's and Children's Hospital experienced a 46% decrease in the number of FOI applications. This was believed to be as a result of an internal policy shift in the processing of FOI applications at the hospital. Previously all requests for information had been processed as FOI applications, however new guidelines meant that only applications made under the FOI Act were processed as such.

This reporting year has seen a reversal in that trend with an increase in the Women's and Children's Hospital of 49% in FOI applications. This may reflect a greater public awareness of FOI and privacy issues in the community.

1.4.2 Breakdown of Applications

In reporting the total number of applications received, agencies are asked to distinguish between those relating to 'personal affairs' and those relating to 'other' material.

'Personal affairs' information refers to records that contain information which can relate to a person's financial affairs, criminal records, marital or other personal relationships, employment records, or personal qualities and attributes.

The types of applications included as personal affairs applications are:

- # applicants applying for access to their own personal information
- # parents seeking access to their child's information (this does not apply where a child is able to provide consent and has not given it)
- # requests from solicitors, personal representatives, insurance agencies, guardians, et cetera, who are acting on behalf of another for access to personal information (where consent is given without requiring the agency to consult the person concerned)
- # next of kin seeking access to a deceased person's personal information
- # applicants applying for not only their own personal information but also other information.

'Other' – refers to all other applications for information, for example, access to policy and administrative records.

The types of applications included as applications for other material are:

- # an applicant applying for the personal information of another person without his or her consent
- # applications for policy or administrative documents.

Table 2 compares this year's results with those of the last two reporting years. The number of applications received increased by 1,509, representing an increase of 19%.

Table 2 – Breakdown of Applications Received – State Government

Type of application	2001-	02	2000	2000-01		2000
	Number	%	Number	%	Number	%
Personal affairs	6928	73	5995	76	5750	72
Other	2499	27	1923	24	2208	28
Total applications	9427	100	7918	100	7958	100

The definition of 'personal affairs' for the reporting years previous to 2000/01 included applications from individuals or organisations for access to information about any other person's personal affairs, however from 2000/01 onwards those types of applications are reported with 'other' types of applications.

The change in the definition seems to have had no effect.

1.4.3 Finalised Applications

Not all applications received are finalised within the reporting year. Finalised applications are determined by subtracting those applications which have been

withdrawn, transferred, or remain unfinished for the reporting year. Any unfinished applications will be carried over into the next reporting year.

Table 3 – Total finalised FOI applications – State Government

		01-02	00-01	99-00	% increase / decrease (2001-02)	% increase / decrease (2000-01)
Total a	pplications	9427	7918	7958	19% á	<1% â
Less	Withdrawn	102	97	75	5% á	29% á
	Transferred	66	126	116	48% â	9% á
	Deferred	N/A		2		
	Unfinished	295	666	326	56% â	104% á
Total fi	nalised applications	8964	7029	7439	28% á	6% â

Table 3 shows the total number of finalised applications. The number of unfinished applications has fallen from 666 to 295, a decrease of 56%. The annual report last year noted that of the 666 applications which remained unfinished, 76% were from the South Australian Police (SAPOL). Of the unfinished applications for 2001-02 79 were attributable to SAPOL and only 2 of these were over 45 days.

In previous years, statistics were not collected which separated the reported figure for unfinished application into those that were under the 45 days time period and those over 45 days. This year agencies were asked to break the figure down for unfinished applications at 30 June 2001. Tables 4 and 5 show this breakdown.

Table 4 – Breakdown of Unfinished Applications (< or = 45 days) – State Government

Type of applications	2001-02	Percentage
Personal affairs	193	77%
Other	57	23%
Total applications	250	100%

Table 5 – Breakdown of Unfinished Applications (> 45 days) – State Government

Type of applications	2001-02	Percentage	
Personal affairs	34	75%	
Other	11	25%	
Total applications	45	100%	

Agencies citied the difficulties in processing unusually large and complex applications, extensive consultation with third parties and complex issues requiring legal consultation as factors resulting in an application not being finalised within the 45 day period.

Finalised applications can be broken down further into the amount of access given, i.e. full access, partial access, refused or deferred.

Tables 6-9 breaks down the number of applications received into 'personal affairs' and 'other', for full access, partial access, refused and deferred, and compare this year's figures to those for the previous two reporting years.

Table 6 - Full Access - State Government

Type of application	2000-02		2000-01		1999-00	
	Number	%	Number	%	Number	%
Personal affairs	5557	83	4430	84	4582	82
Other	2070	85	1522	88	1610	87
Total	7627	84	5952	85	6192	83

Table 7 – Partial Access – State Government

Type of application	2001-02		2000-01		1999-00	
	Number	%	Number	%	Number	%
Personal affairs	537	8	529	10	666	12
Other	168	7	102	6	159	9
Total	705	8	631	9	825	11

Table 8 – Refused Access – State Government

Type of application	2001-02		2000-01		1999-00	
	Number	%	Number	%	Number	%
Personal affairs	460	7	341	6	341	6
Other	161	7	105	6	81	4
Total	621	7	446	6	422	4

Table 9 – Deferred Access – State Government

Type of application	2001-02		2000-01		1999-00	
	Number	%	Number	%	Number	%
Personal affairs	8	0.1	-	-	-	-
Other	3	0.1	-	-	2	0.1
Total	11	0.1	-	-	2	0.1

1.5 Reasons for Refusing or Restricting Access

The FOI Act allows for the refusal or restriction of access to certain documents.

State Government agencies are asked to provide statistics on the reasons for which applicants were refused access to documents. This year 1024 applications were refused on the basis that the document was exempt compared with 682 last year, an increase of 50%.

Table 10 shows the breakdown of the reasons for the restriction or refusal of access to documents.

Table 10 – Reason for Refusing or Restricting Access – State Government

Reason for refusing or restricting access	2001-02	2000-01	% increase / decrease (2000-01)
Application incomplete / wrongly directed	25	71	65%⇔
Unreasonable diversion of an agency's resources	13	34	62%⇔
Fees not paid	72	95	24%⇔
Deemed refusal (over 45 days to respond)	37	6	516%⇒
Exempt document	1024	682	50%⇒
Otherwise available	44	104	58%⇔
Documents created prior to 1 January 1997	2	2	
Exempt agency			
Document does not exist / lost	166	143	16%⇒
Total	1383	1136	22%⇒

Of particular note are the following statistics.

- # The number of deemed refusals has increased considerably, from 6 in 2000-01 to 37 in 2001-02.
- # The number of refusals or restriction of access has fallen for each of the following categories:
 - o 58% decrease in information otherwise available
 - 62% decrease in applications refused because processing would unreasonably divert an agency's resources
 - 65% decrease in applications incomplete or wrongly directed.

Consultation, complexity and legal consultation are the most significant factors which result in access not being determined within the 45 day time period. Further explanation of each of these reasons for refusing or restricting access can be found in Appendix A.

A further breakdown of the exemption classes used by agencies is presented in the following section.

1.6 Exemptions Claimed

There are 19 classes of exempt documents in the FOI Act. The categories listed in the schedule are designed to protect information of a sensitive nature. Full descriptions of these appear in Schedule 1 of the Act. Exemption clauses 5-8 require an agency to consult with a third party before the agency can claim them as exempt.

The following table shows the number of times each exemption was used.

Table 11 – Exemptions Claimed – State Government

Exemp (Claus	otion Claimed se)	2001/02	2000/01	% increase / decrease (2000-01)
1 & 2	Cabinet / Executive Council documents	1	15	93%⇔
3	Exempt under interstate legislation	2	3	33%⇔
4	Affecting law enforcement & public safety	233	160	46%⇒
5	Internal-governmental or local government relations	4	24	83%⇔
6	Affecting personal affairs	739	501	48%⇒
7	Affecting business affairs	34	31	10%⇒
8	Affecting the conduct of research	2	4	50%⇔
9	Internal working documents	48	44	9%⇒
10	Subject to legal professional privilege	70	72	3%⇔
11	Relating to judicial functions	14	17	18%⇔
12	Subject to secrecy provisions	87	79	10%⇒
13	Containing confidential material	209	85	146%⇒
14 & 15	Affecting the economy of the state Affecting financial or property interests	1	35	97%⇔
16	Concerning the operations of agencies	22	150	85%⇔
17	Subject to contempt etc	1	1	-
18	Arising out of companies & securities legislation	-	1	100%⇔
19	Private documents in public library or archival collections	-	-	-
Total		1467	1222	20%⇒

Overall there was a 20% increase in the number of exemptions claimed. The following are of particular significance.

The use of the following exemption clauses has increased:

- ∉ Clause 4 Documents affecting law enforcement and public safety (46%)
- # Clause 13 Documents containing confidential material (146%).

The use of the following exemption clauses has decreased:

- # Clause 5 Documents affecting inter-governmental or local government relations (83%)
- # Clause 16 Documents affecting the operation of agencies (85%)

Further examination of the use of exemption Clause 6 relating to confidential material shows that it was claimed 121 times in relation to one exceptionally large request for documents made to the Department of Treasury and Finance.

Brief explanations of each of class of exemption are presented in Appendix B of this report.

1.7 Ministerial Certificates

During the year, no Ministerial Certificates were reported as being issued under the provisions of Section 46 of the FOI Act.

1.8 Time Taken to Respond to Applications

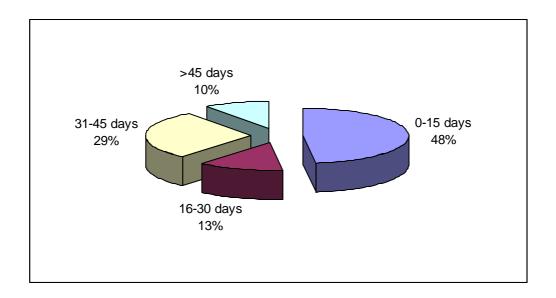
Applications for access under the FOI Act must be dealt with as soon as practicable and in any case within 45 days after receipt by the agency. If an agency takes longer than 45 days to determine the application it is taken that the agency has refused to provide access to the documents. As noted previously, deemed refusals increased significantly this year.

However, as it is not always possible for agencies to determine applications within this time frame, many agencies negotiate an extension with the applicant instead of determining the applications as a refusal.

Agencies reported that 90 per cent of applications were dealt with within the 45 days period, as illustrated in the chart below. This is consistent with figures reported last year.

Factors cited as contributing to applications being determined outside the 45 days time period were the complexity of applications, extensive consultation with the applicants and third parties, and the amount of documents to be considered. In addition agencies reported the necessity to obtain legal advice in relation to determinations as contributing to applications being determined outside the 45 day time period.

Figure 1 – Time taken to determine applications – State Government



1.9 Fees and Charges

The annual statistical return form completed by agencies asked for an estimate of the cost of processing FOI applications, as well as a statement of the actual amount recovered during the year.

Under the *Freedom of Information (Fees and Charges) Regulations 1991*, a fee of \$20.60 was prescribed for the lodgement of a FOI application. If the application is for access to documents relating to a person's own affairs, this fee covers the first two hours spent processing the application. After this period elapses additional charges may be incurred.

However, if the application is for access to documents that do not relate to a person's *personal* affairs, the additional charges can be levied once the agency begins processing the application.

The regulation also provides for a waiver of fees and charges for people who are financially disadvantaged, for example applicants who are receiving a pension or unemployment benefit.

In addition, Members of Parliament are exempt from the first \$350 payable in processing an application.

This year agencies estimated that it cost \$226,616 to process FOI applications, of which they recovered \$115,380. These agencies also reported that there was a total of 48 applications from Members of Parliament, and 3,771 applications from people who were financially disadvantaged.

The above estimation of assessed costs is conservative. Most agencies only record the total fees and charges collected from the applicant. This amount is commonly less than the actual cost to the agency of processing the application.

Adding the above estimation to staffing data provided by agencies, the cost of processing FOI applications is estimated to be over \$1.7 million. This is a significant increase in reported costs over previous years.

1.10 Amendment of Records

The FOI Act also provides people to apply to have records relating to their personal information amended if it is felt the information is incomplete, incorrect, out-of-date or misleading. Where an agency refused to amend a record the applicant can have a notation added to the record.

This year a total of 23 applications were received for amendment of personal information. Of this number, two were still in progress at the end of the reporting period. Table 12 compares the outcome of amendment applications this year to the three previous reporting years. Notations can only be added to a file if the application for amendment has been refused.

Table 12 – Amendment of Personal Information – State Government

Outcome of Amendment application	2001-02	2000-01	1999-00
Amendment agreed	7	7	6
Amendment refused	12	14	7
Partial amendment	2	3	_
Notation added	12	11	6

1.11 Reviews and Appeals

An application may seek an internal or external review of they are dissatisfied with their initial determination.

1.11.1 Internal Review

A person may apply to the Principal Officer, usually the Chief Executive Officer, of an agency to review the determination. Section 38 of the FOI Act states that an application for internal review must be lodged with the agency within 28 days of the original determination, it must be made in writing, and it must be addressed to the Principal Officer. However, if the initial determination was made by the Principal Officer the option for internal review does not exist.

This year 117 applications for internal review were received. All were finalised.

Table 13 shows the result of the finalised internal review applications.

Table 13 – Internal Review – State Government

Outcome of Internal Review	2001-02	2000-01	% increase / decrease (2000-01)
Decision Confirmed	82	61	34%⇒
Decision Varied	31	37	16%⇔
Decision Reversed	2	1	100%⇒
Application Withdrawn	2	1	100%⇒
Total	117	100	17%⇒

1.11.2 External Review

There are two courses of action available for applicants for external review, either review by the Ombudsman or the Police Complaints Authority (PCA), or appeal to the District Court. An applicant can only apply to the PCA if the determination to be reviewed was made by an officer of the Police Force, or the Minister responsible for the administration of the Police Force.

If a person applies to the Ombudsman or PCA for review, an appeal to the District Court cannot be commenced until the external review has been decided. In addition, if an appeal is made to the District Court, after internal review, the applicant has no right to a review by the Ombudsman or PCA.

1.11.3 Review by the Ombudsman or Police Complaints Authority

If an applicant is dissatisfied with an outcome of an internal review, or if the option for internal review is not available, they may seek a review of the determination by the Ombudsman or PCA.

The Ombudsman or PCA may carry out an investigation into the subject matter of the application and, if satisfied that the determination was not properly made, can direct the agency to make a determination in specified terms.

Details of the number of external reviews performed can be found in the annual reports of the Ombudsman and PCA.

1.11.4 Review by the District Court

If dissatisfied with the outcome of an internal review, or with the outcome of the review conducted by the Ombudsman or PCA, or where the option for an internal review was not available, a person may appeal against the determination to the District Court. The District Court may confirm, vary or reverse the determination and make further orders, including orders for costs, as the justice of the case may require.

This year agencies reported that a total of three appeals went before the District Court.

2. Local Government Annual Statistical Returns

2.1 Local Government Act 1934

Local Government authorities in South Australia are bound by Part VA of the *Local Government Act 1934.* Part VA contains similar, but not identical, provisions to those found in the FOI Act.

Unlike State Government agencies, local councils are not obliged to report on FOI activity during the year. However, in June 2002, State Records sent out annual statistical return forms to FOI Officers in the 70 local councils across the State. Replies were received from 53 of these, representing a return rate of 76 %. There were 14 fewer replies received than last year.

An analysis of the returns from Local Government is presented below.

2.2 Outcome of Applications made under the Local Government Act 1934

The annual statistical returns received by State Records for the year ended 30 June 2002 from local councils show that a total of 129 FOI applications were received for processing during 2001-02. Six of these were brought forward from the previous year.

Table 14 compares the results of this year to those of the previous two years. Councils received four less applications this year compared to last year. Thirty-one councils did not receive any applications. There appears to be no pattern in relation to the increase or decrease in applications received by local councils. (Definitions of 'Personal Affairs' and 'Other' are provided on page 9).

Table 14 – Breakdown of Applications Received –	Local Government
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Type of Application	2001	-02	2000-	01	1999-0	00
	Number	%	Number	%	Number	%
Personal affairs	36	28	45	34	48	58
Other	93	72	88	66	35	42
Total Applications	129	100	133	100	83	100

Consistent with State Government agencies, most agencies receive only a small number of FOI applications per year. In addition 59% of local government agencies reported receiving no FOI applications and 27% received only one.

As with State Government agencies, not all applications received by local councils are finalised within the reporting year. Finalised applications are determined by subtracting those applications which have been withdrawn, transferred or remain unfinished for the reporting year. Table 15 shows the total number of finalised applications.

Table 15 - Total Finalised Applications – Local Government

		2001-02	2000-01	% increase / decrease (2000-01)
Total app	plications	129	133	3%⇔
Less	withdrawn	2	5	60%⇔
	Transferred	1	-	100%⇒
	Unfinished	4	6	33%⇔
Total fina	alised applications	122	122	-

In previous years, statistics were not collected which separated the reported figure for unfinished applications into those that were under the 45 days time period and those over 45 days. This year agencies were asked to break the figure down for unfinished applications at 30 June 2002. Tables 16 and 17 show this breakdown.

Table 16 – Breakdown of Unfinished Applications (< or = 45 days) – Local Government

Type of applications	2001-02	Percentage
Personal affairs	1	50%
Other	1	50%
Total applications	2	100%

Table 17 – Breakdown of Unfinished Applications (> 45 days) – Local Government

Type of applications	2001-02	Percentage
Personal affairs	1	50%
Other	1	50%
Total applications	2	100%

Tables 18 - 21 break down the number of applications received into 'personal affairs' and 'other', for full access, partial access, refused and deferred, and compare this year's figures to those for the previous three years.

Table 18 – Full Access – Local Government

Type of application	2001-02		2000-01		1999-00	
	Number %		Number	%	Number	%
Personal affairs	22	65	30	66	29	60
Other	58	64	52	59	24	69
Total	80	64	82	62	53	64

Table 19 - Partial Access - Local Government

Type of application	2001-02		2000-01		1999-00	
	Number %		Number	%	Number	%
Personal affairs	9	26	7	15	4	8
Other	17	19	19	21	6	17
Total	26	21	26	19	10	12

Table 20 – Refused Applications – Local Government

Type of application	2001-02		2000-01		1999-00	
	Number	%	Number	%	Number	%
Personal affairs	2	6	3	7	12	27
Other	11	12	10	11	3	9
Total	13	10	13	10	15	18

Table 21– Deferred Applications – Local Government

Type of Application	2001-02		2000-01		1999-00	
	Number	%	Number	%	Number	%
Personal affairs	-		-		-	
Other	3	3	-		-	
Total	3	2	-		-	

Further discussion of reasons for refusal is presented in the next section.

2.3 Reasons for Refusing or Restricting Access

Like the FOI Act, the *Local Government Act 1934* Part VA (sections 65a to 65zzc) allows for the refusal or restriction of access to certain documents.

Table 22 shows the breakdown of reasons for refusing or restricting access.

Table 22 – Reasons for Refusing or Restricting Access – Local Government

Reason for refusing or restricting access	2001-02	2000-01	% increase / decrease (2000-01)
Application incomplete / wrongly directed			_
Unreasonable diversion of resources	6	3	100%⇒
Fees not paid	-	-	-
Deemed refused – over 45 days		-	
Exempt	29	31	6%⇔
Documents otherwise available	2	2	-
Documents that came into existence before 1 January 1987	1	-	100%⇒
Council certificate	-	1	100%⇔
Record does not exist	3	9	66%⇔
Total	41	46	11%⇔

Reasons for refusing or restricting access have remained relatively constant over the past two years.

Further explanation of each of these reasons for refusal or restricting access is presented in Appendix E.

A further breakdown of the exemption classes used by councils is presented in the following section.

2.4 Exemptions Claimed

There are 13 classes of exemptions listed in sections 65e-65q of Part VA of the *Local Government Act 1934*.

Table 22 (above) shows 29 applications were refused on the basis that the documents fell into one of these 13 classes of exemptions. Table 23 (below) shows the breakdown of exemptions claimed by councils, and compares these figures to the for previous year.

Table 23 - Exemptions Claimed – Local Government

Exemptions claimed	2001-02	2000-01	% increase / decrease (2000-01)
Exempt under interstate legislation		-	
Inter-governmental or local government relations	1	1	
Affecting personal affairs	18	13	38%⇒
Affecting business affairs	4	2	100%⇒
Affecting the conduct of research	-	-	-
Internal working documents	-	3	100%⇔
Subject to legal professional privilege	3	4	25%⇔
Subject of secrecy provisions	-	2	100%⇔
Containing confidential material	15	13	15%⇒
Affecting financial or property interests	-	-	-
Concerning the operations of agencies	1	-	100%⇒
Subject to contempt, et cetera	-	-	-
Private documents in public library or archival collection	-	-	-
Total	42	38	10%⇒

NOTE: because each document can attract more than one exemption category, the number of exemptions claimed can be higher than the actual number of applications refused or granted partial access.

Further explanation of each class of exemption is presented in Appendix F.

2.5 Time Taken to Respond to Applications

Part VA of the *Local Government Act 1934* is identical to the FOI Act, in relation to the requirement for councils to deal with applications for access as soon as practicable and, in any case, within 45 days after the application is received.

However, as with State Government agencies, it is not always possible for councils to determine applications within this time frame – particularly if lengthy consultation with the applicant or third parties is required. In these cases, councils often negotiate an extension with the applicant instead of determining the application as a refusal.

Figure 2 shows the percentage of applications dealt with in 1-15 days, 16-30 days, 31-45 days, and over 45 days. It shows that 97 per cent of applications are reportedly dealt with in the 45 days time period.

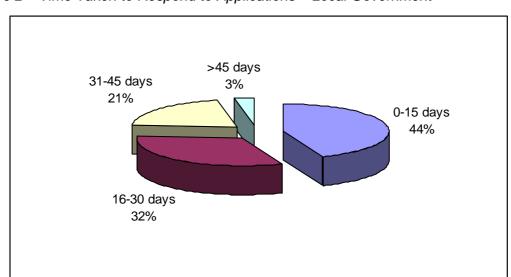


Figure 2 – Time Taken to Respond to Applications – Local Government

The percentage of applications taking longer than 45 days to be dealt with has consistently improved since 1999/2000.

2.6 Fees and Charges

The Annual Statistical Return form asks councils to estimate the cost of processing a Freedom of Information application over the reporting year, in addition to stating the actual costs recovered.

Fees and charges associated with lodging FOI applications are set by regulation. (see page 16).

This year, based on figures supplied by councils to State Records it is estimated that it cost Local Government a total of \$5,434 to process FOI applications, and councils reported they recovered \$1,835 of that amount.

Councils reported receiving 51 applications from people who were financially disadvantaged and four applications from Members of Parliament.

The above estimation of assessed costs is conservative. Most councils only record the total fees and charges collected from the applicant. This amount is commonly less than the actual cost to the council of processing the application.

Local Government reported a cost associated with soliciting legal advice on FOI determinations. Adelaide City Council reported a cost of approximately \$13,000 for obtaining external legal advice, two other councils reported legal advice costing in excess of \$2000, and one other council approximately \$300 in costs.

Adding the above estimation to staffing data provided by agencies the cost of processing FOI application by local government is estimated to be not more than \$110,000.

2.7 Amendment of Records

If a person believes that information held by the council concerning that person's own affairs is incomplete, incorrect, out-of-date or misleading, that person may apply, under section 65zh of the *Local Government Act 1934*, for that information to be amended. Where the council refuses to amend a record the applicant can have a notation added.

Councils reported they received no amendment requests during the year.

2.8 Reviews and Appeals

Applicants may seek an internal or external review if they are dissatisfied with the initial determination.

2.8.1 Internal Review

A person may apply to the Chief Executive Officer of the council to review the determination. Section 65zq of the *Local Government Act 1934* states that an application for internal review must be lodged with the council within 28 days of the original determination, it must be made in writing, and it must be addressed to the Chief Executive Officer. However, if the initial determination was made by the Chief Executive Officer, the option for internal review does not exist.

During the year, councils reported receiving 10 applications for internal review.

Table 24 differentiates the results of the internal review (upheld or varied), by the reasons for which the review was requested.

Table 24 – Results of Internal Revi	ew (Upheld or Varied) –	Local Government

Determination prompting review	upheld			varied			
	01/02	00/01	00/01 % increase / decrease (2000-01)		00/01	% increase / decrease (2000-01)	
Exempt	5	3	67%⇒	3	2	50%⇒	
Other reason	2	1	100%⇒	-	-		
Deferred	-	_	-	-	-		
Unreasonable charges	-	-	-	-	-		
Amendment refused	-	_	-	-	-		
Total	7	4	75%⇒	3	2	50%⇒	

2.8.2 External Review

The two courses of action available to applicants for external review are review by the Ombudsman and/or appeal to the District Court.

If a person applies to the Ombudsman for review, an appeal to the District Court cannot be commenced until the application to the Ombudsman has been decided. In

addition, if an appeal is made to the District Court after internal review, the applicant has no right to a review by the Ombudsman.

2.8.3 Review by the Ombudsman

If an applicant is dissatisfied with an outcome of an internal review, or if the option for internal review is not available, a person may seek a review of the determination by the Ombudsman.

The Ombudsman may carry out an investigation into the subject matter of the application and, if satisfied that the determination was not properly made, can direct the agency to make a determination in specified terms.

Details of the number of external reviews performed can be found in the Annual Report of the Ombudsman.

2.8.4 Review by the District Court

If dissatisfied with the outcome of an internal review, or with the outcome of the review conducted by the Ombudsman or where the option for an internal review was not available, a person may appeal against the determination to the District Court. The District Court may confirm, vary or reverse the determination and make further orders, including orders for costs, as the justice of the case may require.

Section 65zt of the *Local Government Act 1934* states that an appeal must commence within 60 days after notice of review of the determination is given by the local council or the Ombudsman, or in any other case 60 days after the date of the determination.

During the year, councils reported that no appeals went before the District Court.

Appendix A – Reasons for Refusing or Restricting Access – State Government

Application incomplete or wrongly directed

Under section 15 of the FOI Act, an agency can refuse to accept an application which does not contain sufficient information, but only if it has taken such steps as are reasonably practicable to assist the applicant to provide the necessary information.

Unreasonable diversion of an agency's resources

Section 18 allows an agency to refuse to deal with an application if it appears that the nature of application, if carried out, would substantially and unreasonably divert the agency's resources. However, the agency must first endeavour to assist the applicant to amend the application before refusing to deal with it.

Fees not paid

Under Section 18, an agency may refuse to deal with an application if it has requested payment of an advance deposit and payment of the deposit has not been made within the period specified in the request.

Deemed refusal

Section 19 states that, should an agency fail to determine an application within 45 days, it is taken as a refusal of access.

Exempt document

Section 20 allows an agency to refuse access to exempt documents, of which there are 19 classes.

Otherwise available

Also under Section 20, access can be refused to documents that are available for inspection either at the agency which received the application, or at another agency (whether as a part of a public register or otherwise) or in accordance with another Act. Access can also be refused if the document is usually and currently available for purchase, was not created by the agency itself or forms part of library material held by the agency.

Documents created prior to 1987

Section 20 states that applicants can be denied access to documents that came into existence before 1 January 1987 (other than records containing 'personal' affairs). Unless a document contains information concerning the personal affairs of the applicant, or it is a document that is reasonably necessary to enable some other document (being a document to which the agency has given access under this FOI Act) to be understood, or if 20 years have passed since the end of the calendar year in which the document came into existence.

Exempt agency

Schedule 2 of the FOI Act lists the agencies that are exempt from the application of the FOI Act. Agencies can also be exempt under Regulation.

Document does not exist/lost

Section 23 states that, if an agency does not hold the required document, the agency must advise the applicant to this effect in a notice of determination.

Appendix B – Exemptions (FOI Act Schedule 1) – State Government

Clause 1 - Cabinet documents

This refers to documents that have been specifically prepared for submission to Cabinet or documents which are official records of Cabinet.

Clause 2 - Executive Council documents

This refers to documents that have been specifically prepared for submission to the Executive Council or documents which are official records of the Executive Council.

Clause 3 - Exempt documents under interstate Freedom of Information legislation

This refers to documents containing information communicated to government by either the Commonwealth or another state government, and, where notice has been received that this information is exempt under corresponding freedom of information laws.

Clause 4 - Documents affecting law enforcement and public safety

This refers to documents which contain matter the disclosure of which could reasonably be expected to:

- # prejudice the investigation of any contravention of the law
- identify any confidential source of information in relation to the enforcement of the law
- endanger the life and physical safety of any person, or the security of any building, structure or vehicle
- # prejudice the effectiveness of any law enforcement measure
- # prejudice the fair trial of any person or the impartial adjudication of any case
- # prejudice any system or procedure for the protection of persons or property
- facilitate the escape from lawful custody of any person.

Clause 5 - Documents affecting inter-governmental or local governmental relations

This refers to documents the disclosure of which could damage relations between the Government of South Australia and the Commonwealth Government or another State – and also to documents which, if disclosed, would divulge information communicated in confidence by other governments.

Clause 6 - Documents affecting personal affairs

This refers to documents, which if disclosed, would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead). Documents that contain allegations or suggestions of criminal or other improper conduct where the truth of those allegations or suggestions has not been established by judicial process, or which contain information about an elector (obtained in the course of the administration of the *Electoral Act* but not recorded on the electoral roll) also fall under this category.

Clause 7 - Documents affecting business affairs

This refers to documents containing trade secrets of any agency or any other person. It also refers to documents which consist of information that has a commercial value to any agency or any other person, or information which, if disclosed, could be expected to have an adverse effect on business, professional, commercial or financial affairs.

Clause 8 - Documents affecting the conduct of research

This refers to documents relating to the purpose or results of research (including research that has yet to be commenced or completed) and which, if disclosed, could be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being carried out.

Clause 9 - Internal working documents

This refers to documents containing any opinion, advice or recommendation that has been obtained, prepared or recorded; or any deliberation that has taken place in the course of the decision-making functions of the Government, a Minister or an agency.

Clause 10 - Documents subject to legal professional privilege

This refers to documents containing matter privileged from production in legal proceedings on the grounds of legal professional privilege.

Clause 11 - Documents relating to judicial functions, et cetera

This refers to documents that contain matter relating to the judicial functions of a court or tribunal; documents that have been prepared for the purposes of proceedings (including any transcript of the proceedings) that are being heard or are to be heard before a court or a tribunal.

Clause 12 - Documents the subject of secrecy provisions

This refers to documents that contain information which, if disclosed, would constitute an offence against an Act.

Clause 13 - Documents containing confidential material

This refers to documents which, if disclosed, would found an action for breach of confidence. This also refers to information which is obtained in confidence and which, if disclosed, would be expected to prejudice the future supply of such information to the Government or to an agency, and would be contrary to the public interest.

Clause 14 - Documents effecting the economy of the State

This refers to documents which, if disclosed, would be expected to have a substantial adverse effect on the ability of the Government or an agency to manage the economy, and would be contrary to the public interest.

Clause 15 - Documents affecting financial or property interests

This refers to documents which, if disclosed, would be expected to have a substantial adverse effect on the financial or property interests of the State or an agency, and would be contrary to the public interest.

Clause 16 - Documents concerning operations of agencies

This refers to documents which, if disclosed, could be expected to prejudice the effectiveness of any method or procedure for the conduct or tests, examinations or audits by an agency and would be contrary to the public interest; or containing matter which, if disclosed, could prejudice the competitiveness of an agency.

Clause 17 - Documents subject to contempt, etc

This refers to documents which, if disclosed, would constitute contempt of court or infringe the privilege of Parliament.

Clause 18 - Documents arising out of companies and securities legislation

This refers to documents prepared or received by an agency from the Commonwealth or another state for the purposes of the Ministerial Council for Companies and Securities. It also refers to documents which, if disclosed, would reveal the deliberations or decisions of the Ministerial Council for Companies and Securities (other than a document by which a decision of the council has been officially published). Documents provided by or held by the National Companies and Securities Commission, which relate solely to the commission's functions in relation to the law of the Commonwealth or the State Government, also fall under this category.

Clause 19 - Private documents in public library or archival collections

This refers to private documents which are held in a public library or archival collection and have a condition imposed which prohibit their disclosure to members of the public.

Appendix C – Exempt Agencies – State Government

The following is a list of exempt agencies which appear in Schedule 2 of the *Freedom of Information Act 1991*.

- a) the Legislative Council or an officer or committee of the Legislative Council
- b) the House of Assembly or an officer or committee of the House of Assembly
- c) a Joint Committee of the House of Assembly and the Legislative Council
- d) the Public Accounts Committee, the Public Works Standing Committee, and the Industries Development Committee
- e) all Royal Commissions
- f) the State Bank of South Australia
- g) the State Government Insurance Commission
- h) the Auditor-General
- i) the Attorney-General, in respect of functions related to the enforcement of the criminal law
- i) the Parole Board
- k) the Solicitor-General, the Crown Solicitor and the Director of Public Prosecutions
- the Ombudsman and the Police Complaints Authority in respect of their investigative functions
- m) the Public Trustee, in respect of functions exercised as executor, administrator or trustee
- n) the South Australian Government Financing Authority, the Local Government Financing Authority and the South Australian Superannuation Fund Investment Trust
- o) any Minister of the Crown in respect of the administration of the South Australian Development Fund
- p) the Police Force in relation to information compiled by—
 - I. the former Special Branch
 - II. the Operations Planning and Intelligence Unit
 - III. the Anti-Corruption Branch.

The following is a list of additional agencies exempt by Freedom of Information (Exempt Agency) Regulations 1993

- a) the Senior Secondary Assessment Board of South Australia established under the Senior Secondary Assessment Board of South Australia Act
- b) each electricity corporation within the meaning of the *Electricity Corporations*Act 1994
 - (ba) the South Australian Independent Industry Regulator established under the Independent Industry Regulator Act 1999
- c) each State-owned company within the meaning of the *Electricity Corporations* (Restructuring and Disposal) Act 1999 that holds a licence under the *Electricity Act* 1996.

Appendix D - Breakdown of Applications Received by Portfolio - State Government

Table 25 separates the total number of applications received by each Ministerial portfolio into applications received for 'personal affairs' and 'other' matters.

Table 25 – Applications Received by Portfolio – State Government

	2001-02			2000-01	% increase
Ministerial Portfolio	Personal affairs	Other	Total number of applications	Total Number of Application s	/ decrease (2000-01)
Administrative & Information Services	82	19	101	107	6%⇔
Education, Training & Children's Services	42	13	55	61	10%⇔
Environment & Heritage	4	44	48	42	14%⇒
Human Services	4911	1499	6410	5336	20%⇒
Industry & Trade	6	-	6	9	33%⇔
Justice	1856	798	2654	2222	16%⇒
Premier & Cabinet	5	15	20	16	25%⇒
Primary Industries & Resources	1	42	43	35	23%⇒
Transport, Urban Planning & the Arts	8	42	50	74	32%⇔
Treasury & Finance	12	25	37	14	164%⇒
Water Resources	1	2	3	2	50%⇒
Total	6928	2499	9427	7918	20%⇒

Appendix E – Reasons for Refusing or Restricting Access – Local Government

Application incomplete or wrongly addressed

Under section 65w a council can refuse to accept an application which does not contain sufficient information, but only if it has taken such steps as are reasonably practicable to assist the applicant to provide the necessary information

Unreasonable diversion of a council's resources

Section 65z allows a council to refuse to deal with an application if it appears that the nature of application, if carried out, would substantially and unreasonably divert the council's resources. However, the council must first endeavour to assist the applicant to amend the application (so that it no longer would divert the council's resources) before refusing to deal with it.

Fees not paid

Also under Section 65z, a council may refuse to deal with an application if it has requested payment of an advance deposit and payment of the deposit has not been made within the period specified in the request.

Deemed refusal

Section 65za states that, should a council fail to determine an application within 45 days, it is taken to be determined as a refusal of access.

Exempt document

Section 65zb allows a council to refuse access to exempt documents, of which there are 13 classes.

Otherwise available

Under Section 65zb access can be refused to documents that are available for inspection at that or some other council (whether as a part of a public register or otherwise) or in accordance with another Act. Access can also be refused if the document is usually and currently available for purchase was not created by the council itself or forms part of library material held by the council.

Documents created prior to 1987

Section 65zb also states that applicants can be denied access to documents that came into existence before 1 January 1987 (other than records containing personal affairs).

Document does not exist/lost

Section 65ze states that, in a notice of determination, a council must notify the applicant that the agency does not hold such a document.

Appendix F – Exemptions – Local Government (Local Government Act 1934, part VA)

Section 65e - Exempt documents under interstate Freedom of Information legislation

This refers to documents containing information communicated to a council by another council, the Government of South Australia, the Government of the Commonwealth, or another State Government and where notice has been received that this information is exempt under other Freedom of Information laws.

Section 65f - Documents affecting inter-governmental or local governmental relations

This refers to documents the disclosure of which could cause damage to relations between councils, a council and the Government of South Australia or a council and the Government of the Commonwealth. This also refers to documents which, if disclosed, would divulge information communicated in confidence by or on behalf of another council or the Government of South Australia or the Commonwealth to a council or a person or body receiving the communication on behalf of a council.

Section 65g - Documents affecting personal affairs

This refers to documents which, if disclosed, would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead). This also refers to documents that contain allegations or suggestions of criminal or other improper conduct where the truth of those allegations or suggestions has not been established by judicial process.

Section 65h - Documents affecting personal affairs

This refers to documents which, if disclosed, would involve the unreasonable disclosure of information concerning the personal affairs of any other person. This also refers to documents which consist of information that has a commercial value to any council or any other person, or information which, if disclosed, could be expected to have an adverse effect on business, professional, commercial or financial affairs.

Section 65i - Documents affecting the conduct of research

This refers to documents which relate to the purpose or results of research (including research that has yet to be commenced or completed) and which, if disclosed, could be expected to have an adverse effect on the council or other person by on whose behalf the research is being carried out.

Section 65j - Internal working documents

This refers to documents that contain any opinion, advice or recommendation that has been obtained, prepared or recorded; or any deliberation that has taken place in the course of the decision-making functions of a council, and would be contrary to the public interest.

Section 65k - Documents subject to legal professional privilege

This refers to documents that contain matter that would be privileged from production in legal proceedings on the grounds of legal professional privilege.

Section 65I - Documents the subject of secrecy provisions

This refers to documents which contain information which, if disclosed, would constitute an offence against an Act.

Section 65m - Documents containing confidential material

This refers to documents which, if disclosed, would found an action for breach of confidence. This also refers to information which is obtained in confidence and, if disclosed, might be expected to prejudice the future supply of such information to a council, and would be contrary to the public interest.

Section 65n - Documents affecting financial or property interests

This refers to documents which, if disclosed, could be expected to have a substantial adverse effect on the financial or property interests of a council, and would be contrary to the public interest.

Section 65o - Documents concerning operations of councils

This refers to documents which, if disclosed, could be expected to prejudice the effectiveness of any method or procedure for the conduct or tests, examinations or audits by an agency, and would be contrary to the public interest.

Section 65p - Documents subject to contempt, etc

This refers to documents which, if disclosed, would constitute a contempt of court or infringe the privilege of Parliament.

Section 65q - Private documents in public library or archival collections

This refers to documents which are held in a public library or archival collection and have a condition imposed which prohibit its disclosure to members of the public. This only refers to private documents placed in a library or archive (not official records).