

Freedom of Information Act 1991

ANNUAL REPORT
YEAR ENDED
JUNE 2014



Government
of South Australia

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

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1 Minister's Foreword

This is the twenty third FOI Annual Report to be tabled in Parliament since the commencement of the *Freedom of Information Act 1991* (FOI Act) in January 1992. Since this date, 196 677 FOI applications have been made across all sectors, this includes State Government, Local Government and South Australian Universities.

Responsibility for the FOI Act was committed to the Premier as the Minister for the Public Sector on 21 January 2013 which he delegated to me on 28 February 2013. This delegation continued following the State Election in March.

This year agencies across the three sectors received 10 638 applications for access to information under the FOI Act. This number is 1591 less than the previous financial year.

Of the 10 638 applications received during 2013-14, 10 375 applications were determined, with agencies providing access to the information requested either in full or in part in 86% of cases. This was one percent more than the previous reporting year.

The total cost to government for the administration of the FOI Act in 2013-14 was estimated to be \$10.8 million, which was a 6.9% increase from the previous year. This increase can be attributed to a number of factors, including increases in agency costs associated with training and seeking legal advice as well as increases in staff salary costs.

Towards the end of the reporting year I asked State Records, the agency supporting me in the administration of the FOI Act, to consider reforms that could improve the operation of the Act. In doing so, State Records will take into account the recommendations of the former South Australian Ombudsman in his report 'An audit of state government departments' implementation of the Freedom of Information Act 1991 (SA)'. This report is published on the Ombudsman SA website at www.ombudsman.sa.gov.au.

I would like to express my appreciation for the work undertaken by Accredited FOI Officers and other FOI support staff across all sectors who work in an increasingly complex area of administrative law. I would also like to thank State Records for advising and assisting me in the administration of the FOI Act.

The Hon John Rau MP
DEPUTY PREMIER
ATTORNEY-GENERAL

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2 Freedom of Information in South Australia

2.1 What is the Freedom of Information Act?

The objects of the *Freedom of Information Act 1991* (FOI Act) include a responsibility to promote openness and accountability in government and to facilitate more effective participation by members of the public in the processes involved in the making and administration of laws and policies.

This is achieved by conferring on members of the public a legally enforceable right of access to documents in the possession of South Australian State and Local Government and South Australian Universities, subject only to such restrictions that are consistent with the public interest and the preservation of personal privacy.

The FOI Act and its subordinate regulations can be accessed via the South Australian legislation website at www.legislation.sa.gov.au.

2.2 Administration of the FOI Act

State Records of South Australia (State Records) provides support to the Minister responsible for the administration of the FOI Act.

This support includes:

- policy and legislative advice in relation to the operation of the FOI Act
- the development of information sheets and guidelines
- preparation of the FOI Annual Report
- management of the Freedom of Information Management System (FOIMS)
- regular and ad hoc reporting to the Minister
- the provision of training and advice to agencies
- responding to enquiries from members of the public.

In order to produce the FOI Annual Report, all agencies subject to the FOI Act are required to make available to State Records statistical information relating to the processing of FOI applications and the number of contracts entered into containing approved confidentiality clauses.

2.3 Reporting

Pursuant to Section 54AA of the FOI Act, FOI reporting requirements were gazetted on 15 June 2006. These requirements remained unchanged in 2013-14.

State Records derives annual FOI statistics from FOIMS to enable this Annual Report to be produced. FOIMS is a secure web-based system for agencies to record FOI applications. It also assists agencies manage their FOI related reporting obligations.

2.4 Agencies subject to the FOI Act

Section 4 of the FOI Act defines those agencies that are subject to the Act. The definition of 'agency' is inclusive of most State Government agencies and statutory authorities, South Australian Local Government councils (municipal and district) and Universities.

Schedule 2 of the FOI Act and the *Freedom of Information (Exempt Agency) Regulations 2008* (FOI Exempt Agency Regulations) prescribe those agencies that are exempt from the FOI Act.

Throughout this report a reference to agencies includes all entities subject to the FOI Act across the three sectors, i.e. State Government, Local Government and Universities.

3 The Year in Review

3.1 Committal of the FOI Act

From 1 July 2013 to 25 March 2014, the FOI Act was committed to the Honourable Jay Weatherill MP as the Minister for the Public Sector but delegated in accordance with the *Administrative Arrangements Act 1994* to the Attorney-General, the Honourable John Rau MP.

Commencing on 26 March 2014, the FOI Act was committed to the Honourable Susan Close MP as the newly appointed Minister for the Public Sector following the State Election in March. The delegation to the Attorney-General continued.

3.2 Amendments to the FOI Act

3.2.1 *Freedom of Information Act 1991*

Three consequential amendments made by the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) commenced on 1 September 2013.

These amendments were as follows:

- the interpretation of agency under section 4 now includes a regional development assessment panel or a council development assessment panel that has been constituted under the *Development Act 1993*.
- Schedule 2 of the FOI Act now includes the Independent Commissioner Against Corruption, and the Office for Public Integrity as exempt agencies.
- Subsection 4(6) has been included to clarify that *'an agency is not to be taken to hold a document while the document is held by or in the possession of an exempt agency for which the agency is responsible.'*

3.2.2 *Freedom of Information (Exempt Agency) Variation Regulations 2013*

On 5 December 2013 the *Freedom of Information (Exempt Agency) Regulations 2008* were amended by inserting regulation 9 which declares the Small Business Commissioner to be an exempt agency in respect of functions performed under the *Small Business Commissioner Act 2011* and any other Act.

3.2.3 *Freedom of Information (Fees and Charges) Variation Regulations 2013*

Each year the *Freedom of Information (Fees and Charges) Regulations 2003* are varied to adjust the fees and charges associated with making and processing FOI applications by an agreed consumer price index (CPI) indexation rate approved by Cabinet.

During 2013-14 the fee for making an FOI application was set at \$31.50 and processing charges at \$11.70 for each 15 minutes spent by the agency dealing with the application.

The *Freedom of Information (Fees and Charges) Variation Regulations 2014* were published in the South Australian Government Gazette on 6 June 2013 and commenced operation on 1 July 2014.

From 1 July 2014 the fee for making an FOI application is \$32.25 and processing charges are \$12.00 for each 15 minutes spent by the agency in dealing with the application.

3.2.4 *Expiry of Freedom of Information (General) Regulations 2002 and Freedom of Information (Fees and Charges) Regulations 2003*

The *Freedom of Information (General) Regulations 2002* and the *Freedom of Information (Fees and Charges) Regulations 2003* were due to expire on 1 September 2014. In accordance with the *Subordinate Legislation Act 1978* the expiration of these regulations was postponed to 1 September 2015.

3.3 Advice, publications & training

3.3.1 *Advice*

State Records provides an advice service for members of the public seeking access to information held by government agencies. Advice is also provided to agencies in relation to the operation and administration of the FOI Act.

During 2013-14, State Records responded to 1222 FOI related enquiries from members of the public and agencies. This is a 24% increase in the number of FOI related enquiries responded to by State Records the previous year.

It is likely that the increase is a result of an increase in the complexity of FOI applications and the need for agencies to seek more advice and guidance.

Enquiries by source

	Agencies	Public	Combined
FOI and FOIMS			
Telephone calls	625	253	878
Emails	326	18	344
Total	951	271	1222

3.3.2 *Publications*

State Records produces guidelines and information sheets to assist FOI officers to process FOI applications.

During 2013-14, two new guidelines were developed to improve the quality of the general advice and guidance provided to agencies.

All FOI related guidelines and information sheets can be found on the State Records website at <http://government.archives.sa.gov.au/> .

3.3.3 FOI courses delivered during 2013-14

Section 54A of the FOI Act requires the Minister to develop and maintain appropriate training programs in consultation with the Ombudsman SA and the Police Ombudsman. Section 4 of the Act requires the Minister to approve training for Accredited FOI Officers.

State Records delivered 16 FOI training courses during 2013-14. These sessions were attended by 224 participants.

FOI courses delivered during 2013-14

Course Name	No. of Courses	No. of Attendees
Training for Accredited and Non Accredited FOI Officers	12	179
Specialised FOI training sessions – agency specific	4	45
Total	16	224

3.3.4 On-line FOI awareness education

State Records continued to maintain its on-line option for people to learn about Freedom of Information via the ERNI learning portal. The FOI Induction module was completed by 130 participants.

3.4 Statistical data in this report

State Records wrote to agencies on 10 June 2014 to formally advise them of their obligation to report under the FOI Act and to request that they ensure that statistical information relating to their agency for the reporting year was up to date in FOIMS no later than 31 July 2014.

A copy of the database was taken on 6 August 2014 and statistical reports for the 2013-14 financial year were run against this copy during the week commencing 11 August 2014.

3.5 Data inconsistency in FOIMS

In previous years it has been reported that the analysis of data entered in FOIMS has shown that some agencies have recorded information incorrectly, and that some agencies have used FOIMS to manage non-FOI related requests for access. The difficulties in identifying these entries and the resulting inaccuracies have previously been reported. However, it should be noted that despite the data inconsistencies the statistics produced from FOIMS remain consistent from year to year.

3.6 Additional reporting responsibilities

3.6.1 Contracts with approved confidentiality clauses

Clause 13(7) of Schedule 1 to the FOI Act requires the Minister to report annually the number of contracts containing approved confidentiality clauses.

For the 2013-14 reporting year, agencies reported executing 97 contracts that contained an approved confidentiality clause. Of the 97 contracts executed in 2013-14:

- State Government reported 65
- Local Government reported 1
- Universities reported 31.

In addition, a further 45 contracts containing approved confidentiality clauses were recorded in FOIMS that were executed in previous years. The dates of execution of these contracts ranged between 2007 and June 2013, but most were executed between 2011 and June 2013. Of these 45 contracts:

- State Government recorded 20
- Local Government recorded 4
- Universities recorded 21.

3.6.2 Documents provided outside of the FOI Act

The objects of the FOI Act make it clear that the legislation is not intended to prevent access to documents or amendment of personal records outside of the FOI process. Access outside of FOI is usually provided through inspection, or copies provided either for purchase or free of charge. This can make the process of information provision simpler and more efficient for both the public and government.

During the reporting year there were 74 reported instances where agencies refused an FOI application because information could be provided outside of FOI. This is a 46% decrease to the number reported in 2012-13.

On 29 April 2013, Cabinet approved the online publication of selected information that is regularly requested and released under FOI. On 2 September 2013, Cabinet approved the *Proactive Disclosure of Regularly Requested Information* policy, issued as Premier and Cabinet Circular 35 (PC035).

This policy requires State Government portfolio agencies to proactively publish on their websites selected information relating to the expenditure and other details of Ministers and Chief Executives including: their mobile phone and credit card usage; hospitality and overseas travel expenses; certain procurement policies, and expenditure on consultants.

The policy requires portfolio agencies to publish this information from 1 July 2013 onwards with most of the information to be published on a monthly basis.

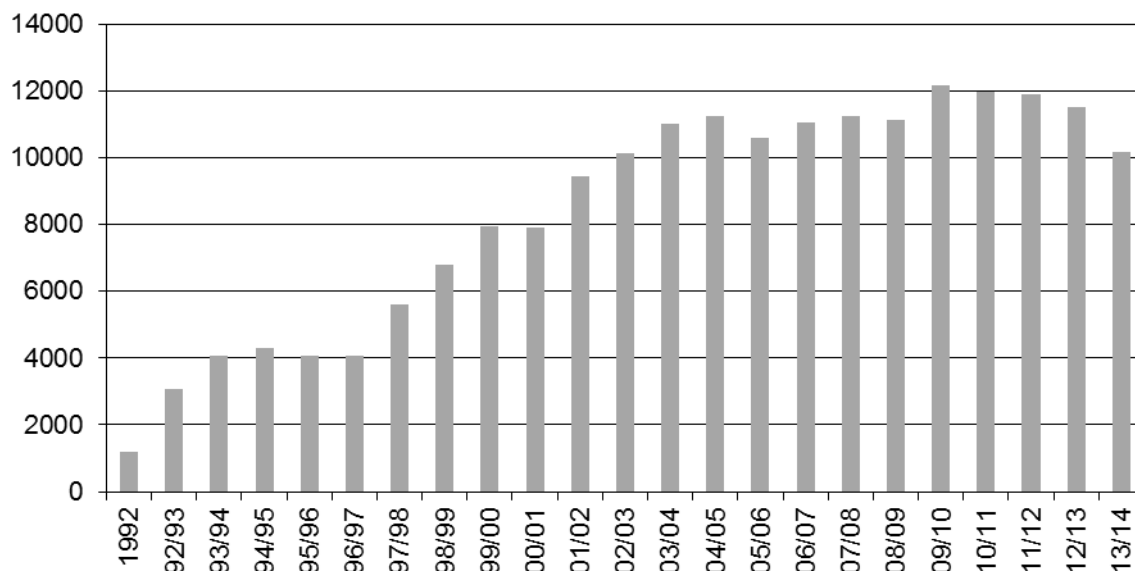
The approximate number of hits on agency webpages where this information is published was 53 628 between September 2013 and June 2014. The number of documents downloaded from these webpages was 16 039. The number of downloads is much less than expected due to the fact that not all agencies subject to PC035 had the software capability to measure the number of downloads. These agencies are considering rectifying this for the 2014-15 reporting year.

4 Statistical Summary – All Years to Date

4.1 State Government

Since the commencement of the FOI Act on 1 January 1992, there has been 192 519 applications for access made to State Government agencies. The chart below shows the growth in applications made to State Government over the past 23 years.

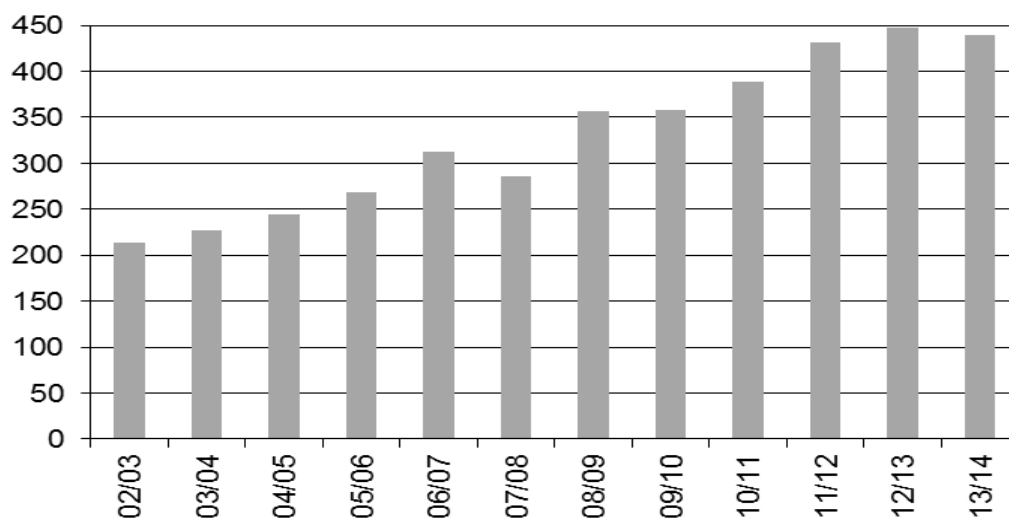
Applications made to State Government since 1 January 1992



4.2 Local Government

Local Government has been subject to the FOI Act since 1 July 2002. Since this date, there have been 3971 applications for access made to Local Government.

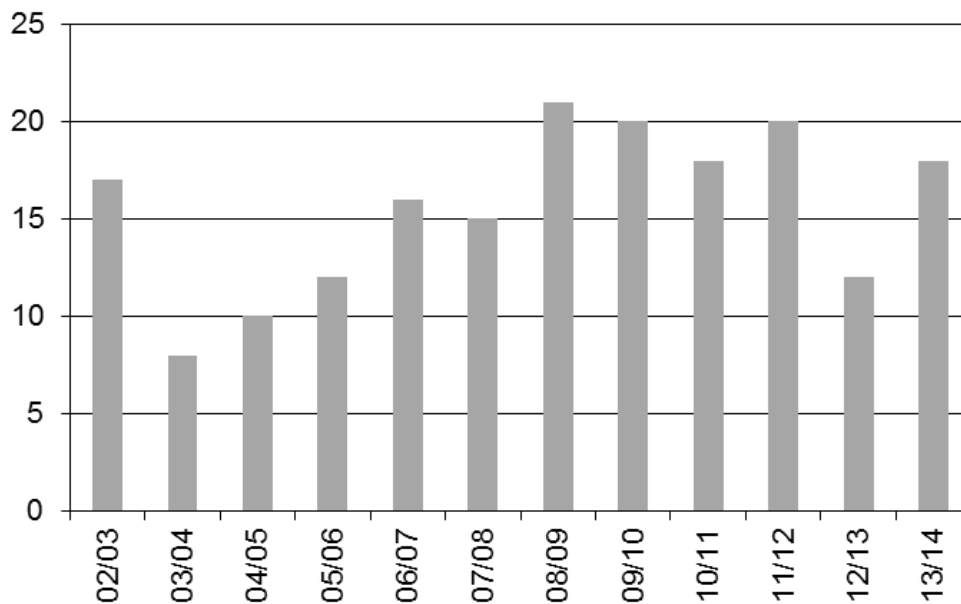
Applications made to Local Government since 1 July 2002



4.3 Universities

The *Freedom of Information (General) Regulations 2002* prescribes the Flinders University of South Australia, the University of Adelaide and the University of South Australia to be included as agencies under the definition of agency in the FOI Act. These Regulations commenced on 11 July 2002. Since that time, there have been a total of 187 applications for access made to Universities.

Applications made to Universities since 1 July 2002



5 Statistical Summary 2013-14

5.1 Applications processed during 2013-14

This year 10 638 FOI applications for access were received by all agencies subject to the FOI Act, which is 1591 less than 2012-13. This reduction could, in part, be a result of agencies providing information outside the FOI Act.

At the end of 2012-13 there were 2220 unfinished applications for access that were carried over into the new reporting year. Therefore, during 2013-14 there was a total of 12 858 applications to be processed, which is 1324 less than the previous year.

Applications received and carried over

Application	State Govt	Local Govt	Universities	All Sectors
New	10 181	439	18	10 638
Carried Over	2172	43	5	2220
Total	12 353	482	23	12 858

5.2 Category of access applications

There are two types of access applications that can be made under FOI, either personal or non-personal. In order to report the numbers of each type of application, agencies are asked to classify the application as either personal or non-personal when the application is recorded in FOIMS.

The criteria for determining the category of an application are listed below.

Personal applications include requests for access:

- to documents concerning the applicant's own personal affairs
- to documents concerning another person's personal affairs on that person's behalf
- to documents concerning the applicant's own personal affairs as well as other information
- made by parents seeking access to their child's information
- made by next of kin seeking access to documents concerning the personal affairs about a deceased person.

Non-personal applications include requests for access:

- to documents concerning the personal information of another person without their consent
- to policy or administrative documents, including documents relating to government initiatives or projects.

There are slightly more applications made to State Government agencies for access to personal information than non-personal. However it is the reverse for Local Government with more applications made for non-personal information.

Applications to be processed by sector & application category

Sector	Personal Affairs		Non-Personal Affairs	
	No.	%	No.	%
New applications 2013-14				
State Government	6105	60%	4076	40%
Local Government	68	15%	371	85%
Universities	9	50%	9	50%
<i>Total</i>	<i>6182</i>	<i>58%</i>	<i>4456</i>	<i>42%</i>
Applications carried forward from 2012-13				
State Government	840	39%	1332	61%
Local Government	13	30%	30	70%
Universities	1	20%	4	80%
<i>Total</i>	<i>854</i>	<i>38%</i>	<i>1366</i>	<i>62%</i>
Total to be processed 2013-14	7036	55%	5822	45%

5.3 Types of applicants

When recording FOI application information in FOIMS, agencies are required to record the type of applicant making the request.

The types of applicants are as follows:

- Lawyer
- Media
- Member of Parliament
- Member of the Public
- Other.

Of the 10 638 applications made during the reporting year, 38% were received from the public, 31% from lawyers or agents, and 20% were received from Members of Parliament. There was a 52% decrease in applications made by the media compared to the previous year. This decrease is most likely due to agencies publishing regularly requested information on their websites under the *Proactive Disclosure of Regularly Requested Information* policy. See paragraph 3.62 for further explanation.

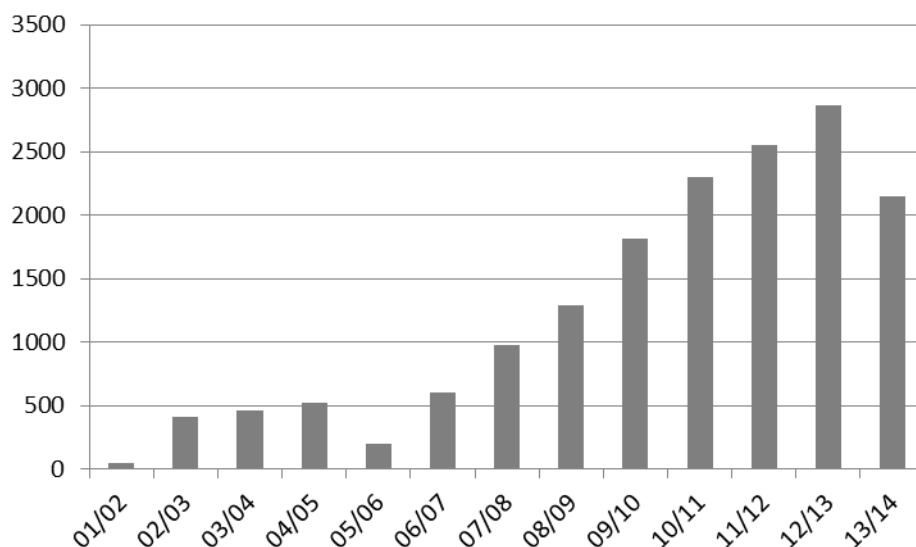
Applications received during 2013-14 by applicant type

Applicant type	State Govt	Local Govt	Unis	All sectors
Lawyer / Agent	3280	54	0	3334
Media	184	18	4	206
Member of Parliament	2068	79	2	2149
Member of the Public	3862	216	8	4086
Other	787	72	4	863
Total	10 181	439	18	10 638

5.3.1 Applications made by Members of Parliament

This year agencies received 2149 FOI applications from Members of Parliament. This is 25% less than the previous year. As the following chart shows, prior to this year, there has been a consistent upward trend in FOI applications received from Members of Parliament. The decrease in 2013-14 is most likely due to the State Election held in March 2014 and agencies publishing regularly requested information on their websites under the *Proactive Disclosure of Regularly Requested Information* policy. See paragraph 3.62 for further explanation.

Applications made by Members of Parliament since 2001-02



5.4 Across government applications

FOI applications that are the same or similar and sent to more than one agency are commonly known as across government FOI applications.

The scope of these applications often encompasses a large number of documents usually requiring significant time for proper consideration of each document and consultation with third parties, where required by the FOI Act. These applications predominantly concern government information that may be common across many agencies.

The kinds of documents sought during the year included documents in relation to compensation claims and payments, targeted voluntary separation packages, incoming government briefings, MP expenses, misconduct and correspondence and emails between various staff.

There were 23 across government applications received in 2013-14 which equates to approximately 220 separate applications received by State Government agencies and statutory authorities. Of these 23 applications, Members of Parliament made 22 and the media made 1.

From time to time, at the request of agencies, meetings of FOI Officers are arranged to discuss the scope and meaning of these applications and to seek general advice on the interpretation of the FOI Act as it relates to the applications. These meetings

provide support to agencies and assist in developing a more efficient approach to processing the applications. During 2013-14 there were six meetings arranged.

5.5 Release of Cabinet Documents 10 Years or Older

On 1 October 2009, the Government introduced its *Freedom of Information Release of Cabinet Documents under the Ten Year Rule* (the Ten Year Rule) Policy issued as Premier and Cabinet Circular 31. The Ten Year Rule sets out the State Government's policy in regard to the release of Cabinet documents under the FOI Act after 10 years rather than the 20 years currently prescribed in the FOI Act.

The Ten Year Rule provides that a Cabinet document can be considered for release, through the FOI process, if 10 years have passed since the end of the calendar year in which it came into existence. When dealing with an application for a Cabinet document under this policy, agencies must give regard to the provisions of the FOI Act, including other exemption clauses in Schedule 1 to the FOI Act. The Department of the Premier and Cabinet (DPC) is designated as the agency to deal with all FOI applications under the Ten Year Rule. There were 33 applications for Cabinet documents made to DPC during 2013-14, under the Ten Year Rule. This was a decrease of 94% on the previous year. Of the 33 applications made during the reporting year, 21 were made by Members of Parliament and 12 were made by members of the public. The media made no applications under the Ten Year Rule in 2013-14.

In the 2013-14 reporting year determinations were issued for 434 applications under the Ten Year Rule. Twelve submissions were released in full, 216 submissions were released in part, five were refused and 201 applications were withdrawn.

5.6 Response time & extensions

5.6.1 Response times

Agencies must deal with applications made under the FOI Act as soon as practicable and within 30 calendar days of receiving a valid application. If the agency takes longer than the 30 days to deal with the application the agency is taken to have refused access to the document. This is referred to as a deemed refusal. In certain circumstances agencies are able to extend this timeframe. Extensions are discussed in section 5.6.2 of this report.

Overall 5560, or 49% of all applications were processed within 30 days. This is 10% less than the previous reporting year. The remaining 51% took longer than 30 days to process which is a 10% increase from 2012-13.

Response times by sector

Time	State Govt	Local Govt	Unis	All Sectors
0-15 days	2902	189	3	3094
16-30 days	2288	167	11	2466
>30 days	5803	75	3	5881
Total	10 993	431	17	11 441

5.6.2 Extensions

In some cases agencies are unable to deal with an application within the 30 day timeframe. Where applications are either broad or complex in nature or both, section 14A of the FOI Act allows agencies to extend the timeframe to deal with an application.

The FOI Act does not prescribe a specific time period for an extension. The agency is required to extend the time for a reasonable period having regard to the circumstances.

A notice of extension is a determination under the FOI Act and can only be made by the principal officer of an agency. While the applicant does not have a right to an internal review of the decision to extend the time, they do have the right to seek an external review.

Formal extensions

Under section 14A of the FOI Act the principal officer of an agency can extend the period within which an application must be dealt, if satisfied that the application is for access to:

- a large number of documents that require searching a large quantity of information that would unreasonably divert the agency's resources
- a document where consultation is required that cannot be reasonably undertaken within the 30 days.

During the reporting year 220 applications were formally extended under section 14A; a decrease of 36% from the previous reporting year.

Formal extension reasons

Extension reason	State Govt	Local Govt	Uni	All Sectors
Section 14(1)(a) - searching	141	10	2	153
Section 14(1)(b) - consultation	51	16	0	67
Total	192	26	2	220

Negotiated extensions

Some agencies negotiate extensions with the applicant. Negotiated extensions are not prescribed in the legislation but rather are a pragmatic approach taken by agencies for satisfying the needs of the applicant.

Anecdotally it seems that agencies choose to negotiate an extension in cases where formally extending an application is no longer possible. This may be because the regulatory timeframe for extending an application has passed, or will pass before the determination on the extension is made, or in instances where the criteria for a formal extension cannot be met. During the reporting year 52 applications were extended informally via a negotiated extension; a decrease of 61% from the previous reporting year.

Negotiated extensions by sector

Extension reason	State Govt	Local Govt	Unis	All Sectors
Negotiated	45	7	0	52

5.7 Outcomes of access applications

5.7.1 Determined and processed

During the reporting year there were a total of 12 858 applications to be processed across all sectors.

Applications can be processed in one of three ways. They can be determined, withdrawn by the applicant or transferred to another agency. In total, 10 964 applications were processed by agencies. Of this number, 10 375 were determined and 589 were either transferred or withdrawn. When an application for access is determined agencies either: fully release a document; partially release a document; or refuse access to a document.

Outcomes of application by sector

Sector	Application Category	Full Release	Partial Release	Refused Number	Refused Percentage
State Govt	Personal	3488	1877	507	9%
	Non-Personal	2278	932	864	21%
	<i>Total</i>	<i>5766</i>	<i>2809</i>	<i>1371</i>	<i>14%</i>
Local Govt	Personal	28	25	10	16%
	Non-Personal	217	87	45	13%
	<i>Total</i>	<i>245</i>	<i>112</i>	<i>55</i>	<i>13%</i>
Universities	Personal	4	3	1	13%
	Non-Personal	5	3	1	11%
	<i>Total</i>	<i>9</i>	<i>6</i>	<i>2</i>	<i>12%</i>
All Sectors	Personal	3520	1905	518	9%
	Non-Personal	2500	1022	910	21%
	Total	6020	2927	1428	14%

The average rate of release of documents under FOI is 86% across all sectors, which is one percent more than the previous reporting year. Of this, 58% of documents were released in full and 28% were released in part.

5.7.2 Reasons for refusal or restriction

The FOI Act allows an agency to refuse access to either the whole or part of a document. An agency can refuse access because it has determined that the document is exempt in accordance with Schedule 1 of the FOI Act – ‘Exempt documents’. The other reasons for refusal are listed in the table below.

Reasons for refusing access by sector

Details	State	Local	Unis	Total
Section 15 - Application incomplete/wrongly directed	18	1	0	19
Section 18(1) - Unreasonable diversion of an agency's resources	31	6	0	37
Section 18(2a) - Abuse of right of access	11	2	0	13
Section 18(3) - Fees not paid	46	4	0	50
Section 19(2) - Deemed refusal - over 30 days to respond	342	0	0	342
Section 20(1) - Exempt document	3027	98	6	3131
Section 20(1)(b)(c)(d) – Documents otherwise available	54	20	0	74

During 2013-14 agencies reported a seven percent increase from the previous reporting year in the number of applications that were refused because the agency took longer than 30 days to respond, that is, the application was considered a deemed refusal under section 19(2). There was also a seven per cent increase in the number of exemptions applied.

In addition to the reasons for refusal there are other instances that can result in an agency being unable to provide access to a document. These instances can be where the:

- document being sought does not exist or has been lost
- agency that received the application is an exempt agency.

Other reasons why an agency could not provide access to a document

Details	State	Local	Unis	Total
Exempt agency	11	3	0	14
Document does not exist/lost	454	20	1	475

The number of refusals resulting from documents either not existing or being lost has decreased by 30%. This may be as a result of improved record keeping practices.

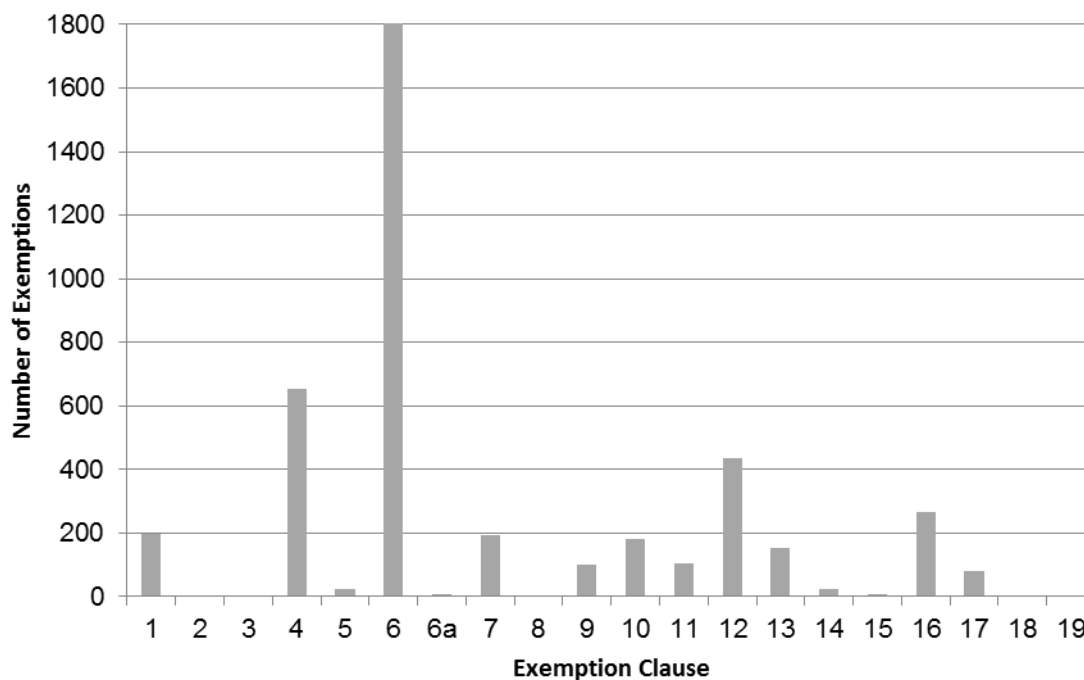
Exemptions

The FOI Act confers on members of the public a legally enforceable right of access to documents subject to certain restrictions. Schedule 1 of the FOI Act includes 19 classes of exempt documents that agencies need to consider when determining if access to the document can be given in full, in part, or whether access is to be refused.

This year exemption clauses were applied 4383 times. In some circumstances, more than one exemption clause may be applied to refuse access when making a determination. Overall this results in the number of exemptions applied being greater than the number of determinations made.

A complete list of the exemption clauses can be found in Schedule 1 of the FOI Act. The FOI Act is available at www.legislation.sa.gov.au.

Exemptions applied across all sectors



The two most commonly applied exemption clauses are:

- Clause 4 – documents affecting law enforcement and public safety
- Clause 6 – documents affecting personal affairs.

The use of these two exemption clauses accounts for 59% of all clauses applied.

5.8 The cost of FOI

In addition to the statistical data derived from FOIMS, State Records seeks further information from agencies in relation to resourcing FOI and other costs associated with FOI. This information includes the number and classification of the staff dealing with FOI in each agency and the time spent undertaking FOI activities. State Records also seeks information relating to any other costs incurred by the agency that relate to FOI, including training and legal costs. The purpose of requesting this information is to estimate the costs associated with the administration of the FOI Act incurred by the three sectors.

5.8.1 Overall cost

The overall cost to agencies for the administration of FOI includes salaries, training, travel and accommodation, seeking legal advice, and any other costs agencies attribute to the administration of FOI. Included in the overall cost to agencies is the support to agencies provided by:

- State Records for the support and management of FOIMS, the provision of training, forums and meetings, and the provision of support and advice to the Minister responsible for the FOI Act.

- Ombudsman SA for the cost of legal officers dealing with FOI reviews
- Police Ombudsman for conducting FOI reviews of SA Police determinations
- advising work undertaken by the Crown Solicitor's Office.

It is estimated that the cost of administering the FOI Act in South Australia was \$10.8 million for 2013-14. This is a 6.9% increase from the previous year.

In 2012-13 it was reported that the number of staff involved in FOI increased by 2.5%. This year agencies reported a further 7.7% increase in salary costs. Staffing numbers and costs are discussed in section 5.8.2.

As well as the reported increase in costs associated with salaries, costs incurred by agencies for attending training and seeking legal opinion increased by 4.2% and 26.2% respectively. Costs incurred for accommodation decreased by eight percent and other additional costs decreased by 13.3%.

5.8.2 Staffing

In order to process FOI applications agencies must employ staff with the appropriate knowledge and skills to understand and complete the tasks involved. Each agency must make the decision on the number and levels of those staff that is appropriate for their agency. While an agency may have a number of staff working on FOI, the FOI Act requires the agency to appoint accredited FOI officers who are at an executive level or in a senior position who reports to an executive. This is to ensure accredited FOI officers have an appropriate level of seniority and expertise to make well informed FOI decisions.

Agency returns show a total of 966 staff across all sectors involved in processing FOI applications. This is an increase of 2.3% compared to the previous year. Of the 966 staff involved in processing FOI applications across all sectors, 274 have been designated as accredited FOI officers, a decrease of 18%.

Many of these staff spend only a portion of their time undertaking FOI related activities. The 966 staff equates to 123.4 Full Time Equivalents (FTE) involved in processing FOI applications. Of these:

- 100.1 FTE were from State Government
- 22.8 FTE were from Local Government
- 0.5 FTE was from Universities.

State Government has recorded a 9.2% increase in their FOI FTE staffing levels and Local Government a 78.1% increase. Universities also increased their FOI FTE staffing levels by 66.7% compared to the previous reporting year. The increase in the FOI FTE staffing levels compared to the much smaller increase in the number of staff involved in the FOI process, shows that staff are spending considerably more time engaged in FOI related activities than last year. This could be a result of agencies receiving greater numbers of large and/or complex applications.

5.8.3 Fees collected

Agencies are able to mitigate some of the costs involved in processing FOI requests by charging applicants fees and charges in accordance with the *FOI (Fees and Charges) Regulations 2003* (Fees and Charges Regulations).

In 2013-14 agencies reported recovering \$371 337. Of this amount 34% or \$126,500 was collected as application fees.

Fees collected by sector in 2013-14

Sector	2013-14	2012-13	% change
State Government	\$ 356 478	\$ 516 561	(31%)
Local Government	\$ 14 859	\$ 9 992	49%
Universities	\$ 0	\$ 0	0%
Total	\$ 371 337	\$ 526 553	(29%)

5.8.4 Fee waiver

The fee waiver information captured in FOIMS relies on agencies recording any fees and charges that would be waived. Recording fee information is not undertaken on a regular or consistent basis if the agency has no plans to charge the applicant.

As a result, the statistics reported below cannot be considered a complete representation of fees that could have been charged to applicants if they had not qualified for a fee waiver.

Applications where fees were waived

Reason for Fee Waiver	State	Local	Unis	Total
Financial Disadvantage	637	11	0	648
Member of Parliament	558	19	3	580
Other	800	19	0	819
Total Waived	1995	49	3	2047
Fee Reduction	5	0	0	5
Total – Waived & Reduced	2000	49	3	2052

Section 53(2)(a) requires that FOI regulations must provide for such waiver, reduction or remission of fees as may be necessary to ensure that people are not prevented from exercising their rights under the Act because they are financially disadvantaged.

Agencies reported waiving or reducing application fees for 2052 applications. In cases of application fee waiver, there is often an associated reduction or waiver of the processing costs of the application. The total amount of fees and charges waived by agencies was \$288 311, with 15% being waived due to financial disadvantage. This is shown in more detail in the table below.

Fee waiver – financial disadvantage

Fee	State	Local	Unis	All Sectors
Application Fees	\$ 0	\$ 0	\$ 0	\$ 0
Processing Fees	\$40 775	\$ 0	\$ 0	\$40 775
Transcript Fees	\$ 0	\$ 0	\$ 0	\$ 0
Photocopying	\$ 2 203	\$ 0	\$ 0	\$ 2 203
Other Costs	\$ 1 309	\$ 0	\$ 0	\$1 309
Total	\$44 287	\$ 0	\$ 0	\$44 287

5.9 Amendment applications

The FOI Act gives members of the public a mechanism to apply for an amendment of a government record about their own personal affairs, which they believe is incomplete, incorrect, out-of-date or misleading.

If an agency refuses to amend the record, the applicant has the right to have a notation added to that record. The notation would include why the applicant believes the record should be amended and may also include any other information that the applicant believes will make the record complete.

This year there were 284 FOI applications for amendment received by agencies, which is a decrease of 28% from 2012-13. All but one application was received by State Government, with Local Government receiving the other. Of the 284 amendment applications made during 2013-14, 260 were made to a single agency.

In addition to the amendment applications received during 2013-14, there were 37 unfinished amendment applications brought forward from the previous year. Therefore, in total there were 321 FOI applications for amendment to be processed by State Government agencies during 2013-14. Determinations were issued for 288 applications with six applications withdrawn by the applicant.

Amendment of personal information

Outcome	2013-14	2012-13
Amendment agreed	55	87
Amendment refused	204	272
Partial amendment	24	18
Notation added	5	6
Total	288	383

The table below demonstrates that the primary reason for determining to refuse to amend a record is that the agency has determined the record to be correct.

Reasons for refusal to amend records

Reason	2013-14	2012-13
Records are not incomplete, incorrect, out-of-date or misleading	203	271
Application contains matter that is incorrect or misleading	0	0
Procedures for amending records are prescribed by or under the provisions of another legislative instrument	1	1
Total	204	272

5.10 Review & appeal

The FOI Act allows any person who is aggrieved by a determination made by an agency to seek a review of that determination. In most cases the applicant must, in the first instance, request an internal review or, where the determination was made by the principal officer, an external review. If following an internal or external review the person is still aggrieved by the determination, they may appeal to the District Court. Each of these options is explained in greater detail in the following paragraphs.

5.10.1 Internal review

An applicant can seek an internal review of an agency's determination within 30 days of the original determination and this review must be completed within 14 days. Where an applicant receives a determination by the principal officer of an agency there is no avenue for internal review and any review, if sought by the applicant, must be carried out externally. Upon an internal review, the principal officer may confirm, vary or reverse the determination under review.

This year there were 328 internal review applications received by all three sectors. This is two less applications than received in the previous year.

In addition to the 328 internal review applications received during the reporting year there were 58 unfinished applications for internal review brought forward from 2012-13, of these 54 were brought forward by State Government agencies.

Therefore, during 2013-14 there were 386 applications for internal review to be processed. Determinations were issued for 326 applications with the decision reversed in 17% of cases.

Outcome of internal review applications

Outcome	2013-14
Decision confirmed	165
Decision varied	107
Decision reversed	54

5.10.2 External review

If an applicant is aggrieved by an internal review determination or a determination made by an agency's principal officer, they can seek an external review by the Ombudsman SA or the Police Ombudsman.

The Ombudsman SA conducts all external reviews, except for determinations made by the South Australia Police or the Minister responsible for South Australia Police. Determinations made by South Australia Police or the Minister responsible for South Australia Police are conducted by the Police Ombudsman.

During 2013-14, the Ombudsman SA advised that 150 external reviews were completed, 74 of those were lodged by Members of Parliament.

The Police Ombudsman advised they received 31 external reviews during 2013-14 with 16 being finalised.

The Ombudsman SA and the Police Ombudsman report separately on external reviews as part of their annual reporting requirements. For further information, please refer to those reports.

5.10.3 Appeal to the District Court

If an applicant is aggrieved by the outcome of an internal or external review they may appeal to the District Court.

During 2013-14, agencies reported seven appeals had been before the District Court during the year and all were finalised. In two cases the District Court confirmed the decision of the agency. Of the remaining five appeals, one was varied, one reversed, two withdrawn and one was discontinued.

5.11 Access applications carried over to 2014-15

Not all applications are processed by the end of the reporting year and are therefore carried over to be processed in the following year. In 2013-14 there were 2308 unfinished applications carried over into 2014-15, a decrease of 16%. Of all unfinished applications, 27% were still within the 30 day timeframe.

Applications carried over to 2014-15

Sector	Within 30 day timeframe	Outside 30 day timeframe	Total Unfinished
State Government	615	1627	2242
Local Government	15	45	60
Universities	0	6	6
Total	630	1678	2308

Of the 2308 unfinished applications, 1678 or 73% were outside the 30 day timeframe at the close of the reporting year. This is 21% less than the previous year. Where an application takes longer than 30 days to process, it is common practice for agencies to inform the applicant of the progress of their application.

Of the 1678 not processed within 30 days, 59% or 990 were non-personal. Those applications that are either broad in scope or complex in nature, or both, tend to fall into the non-personal category. This combination of scope and complexity can result in agencies taking more time to undertake the tasks of document assessment, consultation and decision making.

Overdue applications carried over to 2014-15

Sector	Personal	Non-Personal	Total
State Government	672	955	1627
Local Government	13	32	45
Universities	3	3	6
Total	688	990	1678

6 APPENDICES

6.1 Appendix A – Agency tables

Access applications received – State Government

Agency	Applications Received 2013-14	Applications Received 2012-13
Adelaide & Mt Lofty Ranges Natural Resources Management Board	0	2
Adelaide Cemeteries Authority	1	1
Adelaide Convention Centre	0	0
Adelaide Entertainments Corporation	0	0
Adelaide Festival Centre Trust	3	0
Adelaide Festival Corporation	0	0
Alinytjara Wilurara Natural Resources Management Board	0	0
Architectural Practice Board of SA	0	0
Attorney-General's Department	76	92
Carclew Youth Arts Inc	0	0
Centennial Park Cemetery Authority	0	0
Central Adelaide Local Health Network (CALHN) ¹	2273	2 455
Country Health South Australia Local Health Network (CHSALHN) ²	250	312
Courts Administration Authority	38	29
Defence SA	9	16
Department for Correctional Services	280	289
Department for Communities and Social Inclusion	199	247
Department of Education and Child Development	514	542
Department of Environment, Water & Natural Resources	59	81
Department of Further Education, Employment, Science and Technology	32	69
Department for Health and Ageing	100	97
Department of Manufacturing, Innovation, Trade, Resources and Energy	47	102
Department of Planning, Transport and Infrastructure	222	253
Department for Primary Industries and Regions SA	28	41
Department of the Premier and Cabinet	330	835
Department of Treasury and Finance	245	348
Education and Early Childhood Services Registration and Standards Board	0	1
Electoral Commission of South Australia	10	0
Environment Protection Authority	21	44
Equal Opportunity Commission	2	0
Essential Services Commission	4	1
Eyre Peninsula Natural Resources Management Board	0	0
Forestry SA	6	5
Guardianship Board	0	1
Health Performance Council	0	0
History Trust of South Australia	0	0
HomeStart Finance	0	3

Agency	Applications Received 2013-14	Applications Received 2012-13
Independent Gambling Authority	0	0
Industrial Relations Commission	0	0
Industrial Relations Court	0	1
Legal Practitioners Conduct Board	8	0
Legal Services Commission	6	11
Lifetime Support Authority ³	1	-
Medical Panel SA	0	0
Motor Accident Commission	3	4
Northern Adelaide Local Health Network (NALHN) ⁴	830	956
Northern & Yorke Natural Resources Management Board	0	0
Office for the Ageing	0	0
Office of the Attorney-General	42	31
Office of the Employee Ombudsman	1	0
Office of the Guardian for Children and Young People	0	0
Office of the Minister - Hon Antonio Piccolo MP	44	19
Office of the Minister - Hon Chloë Fox MP (Up until 15 March 2014)	12	20
Office of the Minister - Hon Gail Gago MLC	23	21
Office of the Minister – Hon Geoff Brock MP (The Hon Geoff Brock MP was appointed 26 March 2014)	4	-
Office of the Minister - Hon Grace Portolesi MP (Up until 15 March 2014)	17	45
Office of the Minister - Hon Ian Hunter MLC	27	28
Office of the Minister - Hon Jack Snelling MP	23	25
Office of the Minister - Hon Jennifer Rankine MP	36	50
Office of the Minister – Hon Leon Bignell MP	28	3
Office of the Minister – Hon Martin Hamilton-Smith MP (The Hon Martin Hamilton-Smith MP was appointed 27 May 2014)	0	-
Office of the Minister - Hon Michael O'Brien MP (The Hon Michael O'Brien MP resigned 31 January 2014)	27	25
Office of the Minister – Hon Stephen Mullighan MP (The Hon Stephen Mullighan MP was appointed 26 March 2014)	9	-
Office of the Minister – Hon Susan Close MP (The Hon Susan Close MP was appointed 26 March 2014)	15	-
Office of the Minister - Hon Tom Kenyon MP (The Hon Tom Kenyon MP resigned 25 March 2014)	14	9
Office of the Minister - Hon Tom Koutsantonis MP	28	36
Office of the Minister – Hon Zoe Bettison MP (The Hon Zoe Bettison MP was appointed 26 March 2014)	19	-
Office of the National Rail Safety Regulator (ONRSR)	1	0
Office of the Premier - Hon Jay Weatherill MP	101	106
Office of the Public Advocate	3	1
Office for Public Employment and Review	0	0
Office of the Training Advocate	0	0
Office of the Treasurer – Hon Tom Koutsantonis MP ⁵	36	40

Agency	Applications Received 2013-14	Applications Received 2012-13
(The Hon Tom Koutsantonis MP was appointed as Treasurer 26 March 2014)		
Outback Communities Authority	0	0
Rail Commissioner	2	59
Regional Development Australia Barossa	0	0
Residential Tenancies Tribunal	0	0
SA Ambulance Service	152	214
SA Arid Lands Natural Resources Management Board	1	0
SA Fire and Emergency Services Commission	24	30
SA Lotteries	0	2
SA Murray Darling Basin Natural Resources Management Board	0	0
SA Water	45	98
South Australia Police Service	1940	2 057
South Australian Certificate of Education (SACE) Board	6	4
South Australian Country Fire Service	55	26
South Australian Film Corporation	0	4
South Australian Multicultural and Ethnic Affairs Commission	0	0
South Australian Museum	0	0
South Australian Tourism Commission	28	41
South East Natural Resources Management Board	0	1
Southern Adelaide Local Health Network (SALHN) ⁶	1072	878
State Library of South Australia	0	0
State Theatre Company of SA	0	0
Stormwater Management Authority	0	0
Super SA	2	1
TAFE SA	8	5
Teachers Registration Board of SA	7	11
The Dog & Cat Management Board	0	0
Urban Renewal Authority	30	30
Veterinary Surgeons Board of SA	0	0
West Beach Trust (marketed as Adelaide Shores)	0	2
Women's and Children's Health Network	393	342
WorkCover Corporation	305	226
Workcover Ombudsman	0	0
Workers Compensation Tribunal	0	0
Zero Waste SA	4	6

¹ **Central Adelaide Local Health Network** – includes Breastscreen SA, CALHN Office of the CEO, Donate Life, Pregnancy Advisory Centre, Adelaide Metro Mental Health Directorate – Glenside Campus, Queen Elizabeth Hospital, Royal Adelaide Hospital, SA Dental Service, SA Prison Health Service, Statewide Clinical Support Services and Regional Office.

² **Country Health SA Local Health Network** – health services covered by this local health network are Aboriginal Health, Adelaide Hills Southern Fleurieu and Kangaroo Island Health Service, Aged Care Sub-acute and Community Health Service, Country Health SA - Corporate, Eyre, Flinders & Far North Region, Flinders and Outback, Inner North Country Health Service, Lower South East Health Service, Mallee Coorong Health Service, Country Health SA – Mental Health, Pt Lincoln Ceduna Mid West and Lower Eyre Health Service, Pt Pirie Pt Broughton Southern Flinders and Mid North Health Service, Riverland Health Service, Upper South East Health Service, Yorke and Lower North Health Service.

³ **Lifetime Support Authority** established by the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* commenced on 1 July 2013.

⁴ **Northern Adelaide Local Health Network** – includes Lyell McEwin Hospital, Modbury Public Hospital and the NALHN Office of the CEO.

⁵ Applications made to the **Office of the Treasurer** prior to the appointment of the Hon Tom Koutsantonis MP as Treasurer are included. Applications made in 2012-13 to the Office of the Treasurer are reported against the Hon Jay Weatherill MP.

⁶ **Southern Adelaide Local Health Network** – includes Drug and Alcohol Services SA, Flinders Medical Centre, Noarlunga Health Service, SALHN Mental Health, Repatriation General Hospital and the SALHN Office of the CEO.

Access applications received – Local Government

Agency	Applications Received 2013-14	Applications Received 2012-13
Adelaide City Council	33	44
Adelaide Hills Council	6	8
Alexandrina Council	12	7
Campbelltown City Council	5	7
City of Burnside	2	12
City of Charles Sturt	38	40
City of Holdfast Bay	6	12
City of Marion	11	13
City of Mitcham	13	16
City of Mount Gambier	4	2
City of Norwood, Payneham & St Peters	0	3
City of Onkaparinga	30	22
City of Playford	16	12
City of Port Adelaide Enfield	29	19
City of Port Lincoln	3	2
City of Prospect	7	7
City of Salisbury	19	13
City of Tea Tree Gully	9	11
City of Unley	52	78
City of Victor Harbor	2	3
City of West Torrens	14	9
Clare & Gilbert Valleys Council	3	5
Coorong District Council	0	0
Corporation of the Town of Walkerville	3	3
District Council of Barunga West	1	0
District Council of Ceduna	2	2
District Council of Cleve	0	0
District Council of Coober Pedy	1	0
District Council of Elliston	1	0
District Council of Franklin Harbour	0	0
District Council of Grant	7	4
District Council of Karoonda East Murray	1	0
District Council of Kimba	0	0
District Council of Lower Eyre Peninsula	1	1
District Council of Loxton Waikerie	0	2
District Council of Mallala	0	0
District Council of Mount Barker	7	8
District Council of Mount Remarkable	2	-
District Council of Orroroo Carrieton	0	0
District Council of Peterborough	0	0
District Council of Robe	0	0
District Council of Streaky Bay	2	5
District Council of Tatiara	0	0
District Council of The Copper Coast	11	16

Agency	Applications Received 2013-14	Applications Received 2012-13
District Council of Tumby Bay	7	3
District Council of Wudinna	0	0
District Council of Yankalilla	0	2
District Council of Yorke Peninsula	3	2
Eastern Health Authority Inc.	2	1
Flinders Ranges Council	2	0
Kangaroo Island Council	4	2
Kingston District Council	1	1
Light Regional Council	4	4
Mid Murray Council	19	9
Naracoorte Lucindale Council	0	1
Northern Areas Council	1	2
Port Augusta City Council	3	3
Port Pirie Regional Council	3	2
Regional Council of Goyder	5	1
Renmark Paringa Council	1	1
Roxby Downs Council	2	1
Rural City of Murray Bridge	6	7
Southern Mallee District Council	0	0
The Barossa Council	4	2
The Berri Barmera Council	1	3
Town of Gawler	6	8
Wattle Range Council	6	3
Whyalla City Council	6	3

Access applications received – Universities

Agency	Applications Received 2013-14	Applications Received 2012-13
Flinders University	6	1
University of Adelaide	12	8
University of South Australia	0	3

6.2 Appendix B – Reasons for refusing access

Application incomplete or wrongly directed

Under section 15 of the FOI Act, an agency cannot refuse to accept an application because it does not contain sufficient information, without first taking such steps as are reasonably practicable to assist the applicant to provide the necessary information.

Unreasonable diversion of an agency's resources

Section 18(1) allows an agency to refuse to deal with an application if it appears that the nature of the application, if carried out, would substantially and unreasonably divert the agency's resources.

However, before refusing to deal with it, the agency must first endeavour to assist the applicant to amend the application (so that it would no longer divert the agency's resources). See section 18(2).

Abuse of the right of access

Section 18(2a) allows an agency to refuse to deal with an application if, in the opinion of the agency, the application is part of a pattern of conduct that amounts to an abuse of the right of access or is made for a purpose other than to obtain access to information.

Fees not paid

Under section 18(3), 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

Pursuant to section 19(2), should an agency fail to determine an application within 30 days, or within the time period if it has been so extended, it is deemed a refusal of access. However, a determination for access made after the time period is still considered a valid determination under the FOI Act. See section 19(2a).

Exempt document

Section 20(1)(a) allows an agency to refuse access to exempt documents, of which there are 19 classes outlined in Schedule 1 to the FOI Act.

Otherwise available

Section 20(1)(b), (c) and (d) allows access to be refused to documents that are available for inspection either at the agency which received the application, or at another agency (whether 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, or was not created by the agency itself and genuinely forms part of library material held by the agency.

6.3 Appendix C – Other reasons for not providing access

Exempt agency

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

The FOI Act can be accessed via the South Australian legislation website at www.legislation.sa.gov.au.

Document does not exist or is lost

Section 23(1)(b) requires that, if an agency does not hold the required document, the agency must advise the applicant to this effect in a notice of determination.