

ANNUAL REPORT

YEAR ENDED
JUNE
2003

Freedom of Information Act 1991



Government
of South Australia

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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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DEAR MR SPEAKER

DEAR MR PRESIDENT

As the Minister responsible for the administration of the *Freedom of Information Act 1991* (FOI Act) and in accordance with Section 54 of that Act, I submit this annual report on its administration for the year ended 30 June 2003.

This is the twelfth annual report on the administration of the FOI Act in South Australia.

The Hon. Jay Weatherill MP
MINISTER FOR URBAN DEVELOPMENT AND PLANNING
MINISTER FOR ADMINISTRATIVE SERVICES
MINISTER FOR GAMBLING

October 2003

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FOREWORD



The Hon Jay Weatherill MP

The review of the Freedom of Information (FOI) regime in South Australia has resulted in much attention being focussed on FOI, both by Members of Parliament and the media.

This scrutiny has been welcomed. I am encouraged by the discussion generated, because I believe that FOI is a worthy and intriguing topic.

This analysis has meant that the decisions made by Accredited FOI Officers have been put under the microscope for greater examination.

I would like to take this opportunity to express my sincere gratitude to all FOI Officers, both Accredited and Non Accredited and all other staff who support the FOI process. The dedication they display to the task, particularly under increasing pressure, is fundamental to the success of FOI. Even with the significant increase in FOI activity, over 90% of FOI requests were dealt with in the 30 day timeframe and 80% were granted in full.

This annual report is the first to take into consideration the effect of the previous Government's *Freedom of Information (Miscellaneous) Amendment Act 2001*. The most noteworthy changes of which were the amendment to the timeframe for dealing with FOI applications and the requirement that FOI applications be dealt with by an Accredited FOI Officer.

During the 2002-2003 reporting period, a further assessment of the FOI Act was undertaken in accordance with this Government's commitment to openness and accountability. This assessment was undertaken by staff members of State Records of South Australia. The commitment shown by State Records to the process, and their belief in the FOI Act as a tool for gaining access to government held information, is worthy of recognition.

On 28 August 2002 the *Freedom of Information (Miscellaneous) Amendment Bill 2002* (FOI Amendment Bill) was introduced in the House of Assembly. This bill was the legislative outcome of the above process.

A significant increase in FOI activity has occurred this year as the statistics in the main body of this report show.

I believe that FOI is a necessity for the scrutiny of government, however I firmly believe that FOI should be used only as a last resort to gain access to information held by the Government. I am as committed to ensuring the effectiveness of other access regimes to limit the necessity for FOI, as I am to ensuring the effectiveness of the FOI process.

The Hon. Jay Weatherill MP
MINISTER FOR URBAN DEVELOPMENT AND PLANNING
MINISTER FOR ADMINISTRATIVE SERVICES
MINISTER FOR GAMBLING

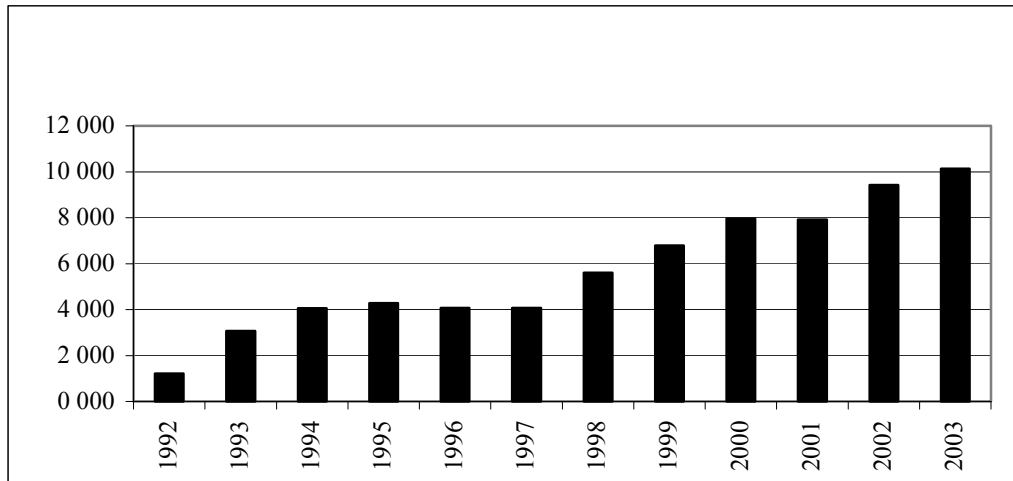
October 2003

IN SUMMARY

Over the last 12 years

Since the date of commencement of the FOI Act on 1 January 1992 there have been 68 563 applications made to South Australian State Government agencies. The graph below shows the breakdown of these applications over the last 12 years. It should be noted that in 1992, the Act only operated for six months.

Chart 1 – Applications made to State Government agencies since 1 January 1992



The Year In Review

Freedom of Information (Miscellaneous) Amendment Act 2001

A Bill to amend the FOI Act was introduced by the previous Government in 2001 and commenced operation on 1 July 2002. Of the amendments made to the FOI Act, the two most significant were the requirement that agencies appoint an accredited FOI Officer and a reduction in the time allowed to process an FOI application from 45 to 30 calendar days.

To meet the requirements of the Act, a training program was introduced for the purpose of accrediting FOI Officers. To ensure that agencies were in a position to comply with the Act, training commenced prior to its commencement.

As reflected in the statistics, agencies are endeavouring to meet the requirement to process FOI applications within the 30 calendar day time limit with few exceptions.

In addition, the amendment repealed Part VA of the *Local Government Act 1934* and amended and broadened the definition of “agency” to specifically include local government and South Australian universities respectively.

Freedom of Information (Miscellaneous) Amendment Bill 2002

The Governments 10-Point Plan for honesty and accountability featured the following two commitments which lead to the introduction of the *Freedom of Information (Miscellaneous) Amendment Bill 2002* in August 2002:

- strengthen the powers of the State Ombudsman
- improve Freedom of Information

Consequently further assessment of the State's Freedom of Information legislation and its administration was undertaken, with the development of a new regime dealing with both of these commitments.

The assessment of the legislation identified a number of reforms to meet the Government's commitment including:

- abolishing Ministerial and agency certificates
- transforming external review and appeal procedures to enhance the role and power of the Ombudsman and the Police Complaints Authority and to make the review process more efficient
- amending specific exemptions categories in Schedule 1 of the Act including the ability to access some Cabinet documents
- extending the time limit for disclosure of personal information

The Bill was introduced in August 2002 and has been debated in both Houses of Parliament. The Legislative Council made significant amendments to the Bill, but the House of Assembly has not accepted these amendments. It is expected that a deadlock conference may be required to achieve an outcome for the Bill.

Administrative Measures to improve the FOI Regime in South Australia

The administrative measures identified in the process to improve administration of the Act were designed to ensure that the Government's commitment to openness and accountability was met.

Various administrative initiatives were designed to improve public sector processes and the culture in which FOI decisions are made. This is a major change for the public sector particularly when coupled with Citizens' Rights to Information Charter changes in to Act. The initiatives that have been implemented during the year include the following:

The Charter was developed to promote to members of the public the Government's commitment to openness, honesty and accountability by making information in Government documents and records readily accessible. It also promotes an individual's right to access documents and records about themselves and the right to access documents and records about government operations and decisions.

In support of the Charter a brochure was developed explaining the methods by which the public may gain access to government held information.

The Charter and supporting brochure are now being displayed at all State Government public access points.

FOI Electronic Discussion Forum

The Freedom of Information Electronic Discussion Forum is designed to promote the exchange of information through an electronic network of FOI Officers from State and Local Government and South Australian universities about issues relating to Freedom of Information. The forum has been widely used by those interested in FOI both within South Australia and interstate and continues to be an effective mechanism for communication.

FOI Officers Forum

This Forum provides a means for FOI Officers to be kept informed of the latest developments, trends and changes of FOI regimes within Australia and overseas. There have been two forum's held during the reporting year which included a discussion panel and speakers addressing various topics such as "*Balancing FOI and Privacy*".

FOI Process Guide

In addition to the accredited officer training, a Process Guide was developed to assist agencies in processing FOI applications. The Guide contains a process map, explanations on each step of the process and draft standard letters. The Guide is generic and can be tailored to meet the specific administrative requirements of individual agencies.

Monthly reporting

In order to monitor the effectiveness of FOI more closely, monthly reporting was introduced from January 2003.

Other Initiatives

Further initiatives are continuing to be developed to improve the effectiveness and efficiency of FOI throughout government. Some of these initiatives include:

- Proactive Disclosure Policy
- FOI statement on government forms
- key performance indicators

The following is a statistical report on the administration of the FOI Act in South Australia.

STATISTICAL SUMMARY

This year there were 10 359 FOI applications processed by all agencies bound by the Act. Included in this figure are 320 applications brought forward from the last reporting year.

Of these applications:

- 10 129 were made to State Government agencies
- 213 were made to Local Government
- 17 were made to South Australian universities

State Government Summary

As previously mentioned, for the 2002-2003 reporting year State Government Agencies reported having 10 129 applications to process this reporting year, an increase of 702 applications or 7.4%.

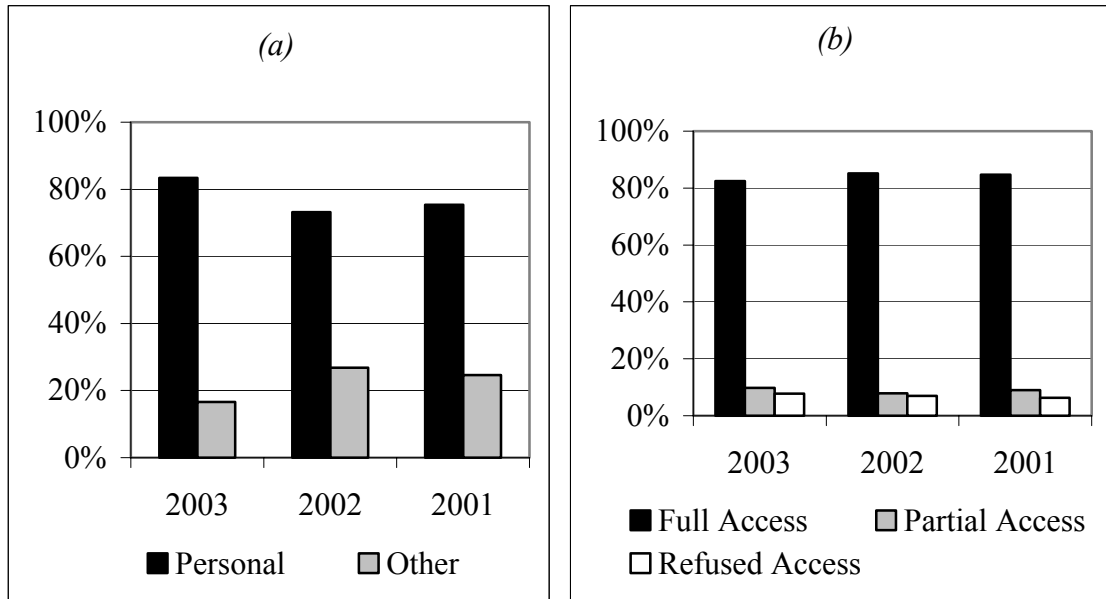
Of the above figure agencies reported a 25% increase in personal affairs applications received, 10% more than the 15% increase reported last year. Applications for non personal information decreased by 25% this year, in direct contrast to the 30% increase reported last year.

Key data in relation to statistics provided by State Government agencies includes:

- over 90% of applications processed in 2002-2003 were finalised within 30 days
- a dramatic increase in the number of applications received by Members of Parliament where a fee waiver was granted, from 48 applications last year to 410 applications this year
- 1.8% of completed applications had time limits extended in accordance with section 14A

The following charts show the proportion of applications made for personal information compared to applications made for non-personal or other information, and the outcome of those applications.

Charts 2 (a&b) Applications determined and Outcome of determinations (State Government) – (9463 applications)



Note: the 21 applications deferred by State Government resulted in .0022% deferral, which is too small to depict.

Local Government Summary

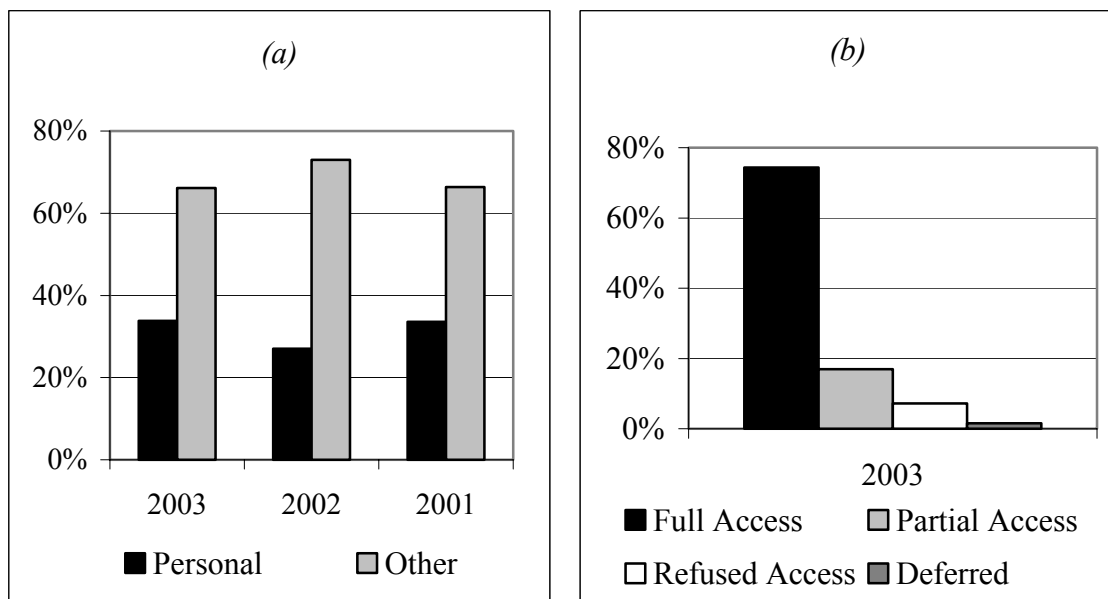
This is the first reporting year that applications made to Local Government were processed in accordance with the requirements of the FOI Act instead of the provisions of the *Local Government Act 1934*.

This year there was a 65% increase in applications to be processed in the reporting year for Local Government agencies.

Key data relating to statistics provided by Local Government agencies includes:

- over 92 % of applications to be processed in 2002-2003 were processed within 30 days
- a 121 % increase in personal affairs applications
- a 50 % increase in non-personal affairs applications

Chart 3(a&b) – Applications determined and Outcome of Determinations (Local Government) – (195 applications)



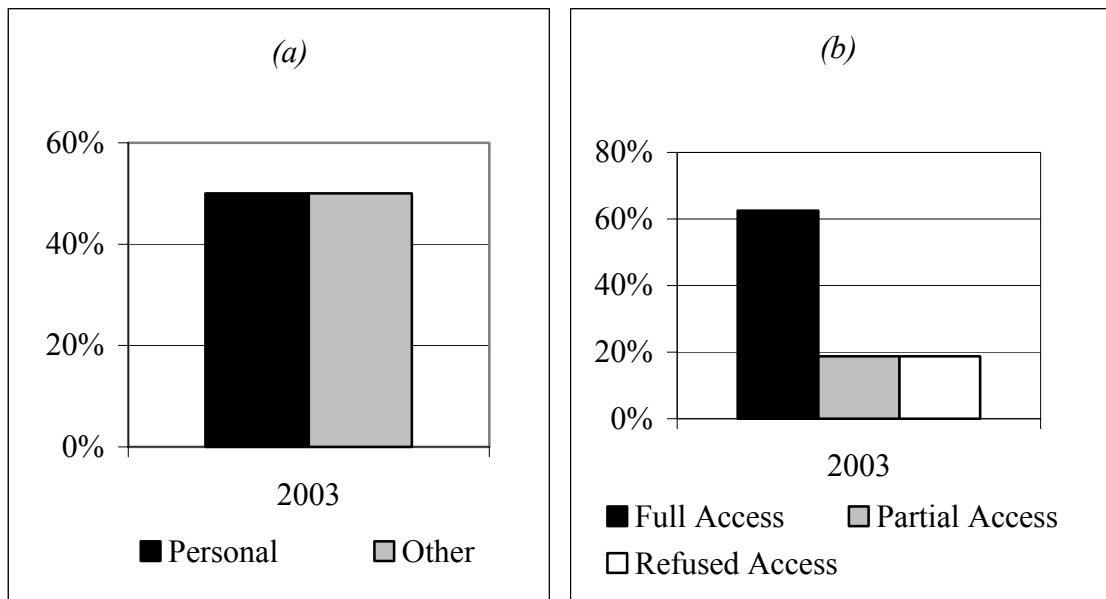
Universities Summary

This is the first year that South Australian universities have formally provided FOI statistics. This is a result of amendments to the FOI Act that commenced operation on 1 July 2002, that amendment brought them within the scope of the FOI Act.

Key data relating to statistics provided by universities includes:

- 2 applications were extended in accordance with section 14A
- 87% of applications received were processed within the 30 day time frame.

Chart 4 (a & b) – Applications determined and Outcome of Determinations (Universities)
– (16 applications)



ACTIVITY UNDER THE FOI ACT

Introduction

All State Government agencies, including statutory authorities and government business enterprises, local government authorities and South Australian universities are required to complete a FOI annual statistical return.

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

Requests received

Volume

The combined results of annual statistical returns for all agencies bound by the FOI Act show there were 10 359 FOI applications to be processed during the reporting year, including those brought forward from the previous year.

Since 1999-2000 the top five agencies in terms of volume of applications received have been reported on. The examination of those same agencies has continued for each subsequent year. Last year a sixth agency, the Lyell McEwin Hospital, was included due to a marked increase in the volume of applications received. These top six agencies received 70.6 % of the total applications received across the three sectors bound by the FOI Act.

Table 1 – Percentage increase / decrease of applications received for the top six agencies

<i>Agency</i>	<i>2002/ 2003</i>	<i>2001/ 2002</i>	<i>2000/ 2001</i>	<i>% increase / (decrease) 2001/2002 – 2002/2003</i>
South Australian Police (SAPOL)	2357	2451	2038	(4.2%)
Royal Adelaide Hospital	2304	1996	1600	15 %
Queen Elizabeth Hospital	789	832	707	(5%)
Women's and Children's Hospital	533	692	465	(23%)
<i>Lyell McEwin Hospital</i>	<i>716</i>	<i>622</i>	<i>462</i>	<i>15%</i>
Flinders Medical Centre	614	580	519	6%

The figures for SAPOL above require explanation. The total number to be processed has dropped by 94 applications, the number of new applications received in 2002-2003 increased by 331 or 17 %. The reason there were more applications to be processed last year than this year is because SAPOL had 504 unfinished applications to process in 2001-2002 and only 79 in 2002-2003. The decrease in the number of outstanding applications is a significant achievement for SAPOL.

Of the 225 agencies that provided statistics for the 2002-2003 annual report, 51 state government and 29 local government agencies reported receiving no applications for 2002-2003.

Of those agencies that reported receiving any FOI applications in 2002-2003:

- 69 % of all state government agencies received at least one FOI application
- 52 % of all local government authorities received at least one FOI application
- each of the three universities received at least one FOI application.

Type

Agencies are asked to distinguish between applications relating to personal affairs and those relating to other material.

Applications for material relating to personal affairs can include:

- applicants seeking access to their own personal information
- parents seeking access to their child’s information
- requests from people 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. This can include solicitors, personal representatives, insurance agencies and guardians
- next of kin seeking access to personal information about a deceased person
- applicants applying for their own information as well as other information.

Other – refers to all other applications for information. These types of applications can include:

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

The following tables show the number and percentage of applications made for access to information relating to both personal affairs and other material.

Table 2 – Breakdown of Applications to be processed – State Government

Type of applications	2002-2003		2001-2002		2000-2001	
	Number	%	Number	%	Number	%
Personal affairs	8345	82	6928	73	5995	76
Other	1784	18	2499	27	1923	24
Total applications	10129	100	9427	100	7918	100

Table 3 – Breakdown of Applications to be processed – Local Government

Type of applications	2002-2003		2001-2002		2000-2001	
	Number	%	Number	%	Number	%
Personal affairs	77	36	6928	73	5995	76
Other	136	64	2499	27	1923	24
Total applications	213	100	9427	100	7918	100

Table 4 – Breakdown of Applications to be processed – universities

Type of applications	2002-2003	
	Number	%
Personal affairs	8	47
Other	9	53
Total applications	17	100

Finalised applications

Not all applications are finalised within the reporting year. Any unfinished applications will be carried over into the next reporting year.

As a result of the amendments to the FOI Act that came into effect on 1 July 2002, applications carried over into the 2002-2003 reporting year were processed under the requirements of the Act pre 1 July 2002, ie agencies had 45 days to process those unfinished applications instead of 30 days. Three hundred and fifteen applications were carried forward into the 2002-2003 reporting year by State Government agencies and five applications were carried forward by Local Government authorities. As the FOI Act prior to 1 July 2002 did not bind universities there were no applications carried forward.

Overall, 419 applications remained unprocessed at 30 June 2003.

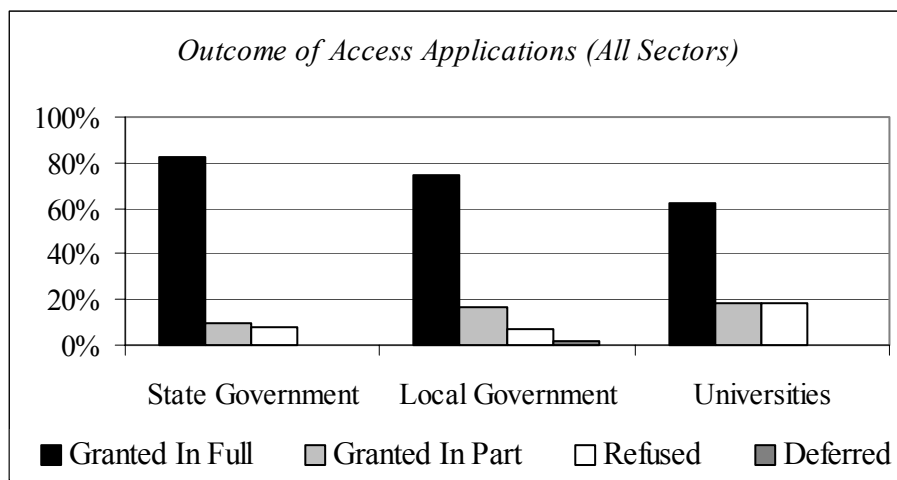
Of this total number:

- 406 were made to State Government agencies
- 13 were made to local government authorities.

Of these applications, State Government agencies reported 7 applications that were made prior to 1 July 2002 were still unfinished, ie were to be processed within 45 days. Of the applications to be processed within 30 days, 158 were over the 30 day time frame, some of which may have been extended under Section 14A of the Act. This requires further explanation. Some agencies were unable to report separately on those applications to be processed within 45 days. Therefore, some of the applications reported as unfinished and over 30 days at 30 June 2003 may still have been within the 45 day time frame. The time these applications were made cannot be determined.

Of the 13 applications made to local government authorities, four applications were over the 30 day time frame. Once again, the same situation applies. The time these applications were made cannot be determined.

Chart 5 – Outcome of Access Applications (all sectors)



As the above table shows the State Government determined that in over 80 % of cases, applicants received full access to the documents they requested. Tables 13-15 in Appendix C show the outcome of access determinations for all sectors.

Extensions

As a result of the FOI Amendment Act, section 14A allows agencies to extend the period within which an application for access must be dealt.

Section 14A allows for the principal officer of an agency that is dealing with an application to extend the 30 day period if the application is for access to a:

- a large number of documents or requires a search to be conducted through a large quantity of information which would unreasonably divert the agencies resources from their use in the exercise of its function, or
- a document in relation to which consultation is required under Division 2 and it will not be reasonably practicable to comply with Division 2 within that period.

One hundred and ninety two applications were extended in accordance with Section 14A of the Act. Over half of which were extended by between 22 and 28 days.

Of this total number:

- 169 applications, or 1.7 % of all applications made to State Government agencies were extended
- 23 applications or 10.8 % of all applications made to Local Government were extended
- two applications, or 11.8 % of all applications made to universities were extended.

Agencies reported extending the time to process an application as a result of the requirement to conduct large searches and to undertake consultation. However, agencies most cited consultation as the reason for extending the period that an application must be dealt within.

Reasons for Refusal

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

The table below shows the breakdown of the reasons given by agencies across all sectors for the restriction or refusal of access to documents. Complete tables for each sector can be found in Appendix C.

The table below illustrates that, access is restricted or refused in the majority of cases because the document being sought is determined to be exempt.

Chart 6 – Reasons cited for restricting or refusing access (all sectors)

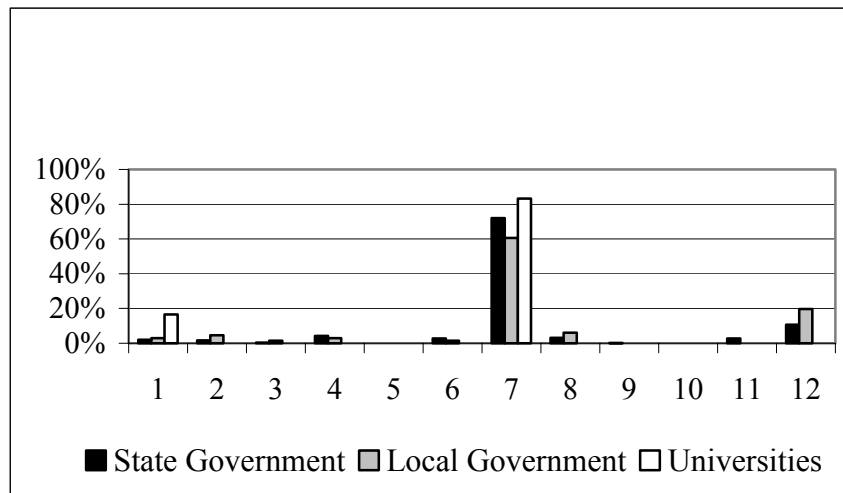


Table 5 – Explanation of Reasons Cited for Restriction or Refusal of Access.

Number	Reason	Number	Reason
1	Application incomplete / wrongly directed	7	Exempt
2	Unreasonable diversion of resources (Section 18(1))	8	Documents otherwise accessible
3	Abuse of right of access (section 18(2)(a))	9	Documents that came into existence before 1 Jan 1987
4	Fees not paid (Section 18(3))	10	Ministerial / Agency Certificate
5	Deemed refusal – over 30 days	11	Record does not exist / lost
6	Deemed refusal – over 45 days	12	Exempt under Schedule 2 – Exempt agencies

Exemptions claimed

Further analysis demonstrated in the chart below shows that clauses 6 and 13 of Schedule 1, documents affecting personal affairs and documents containing confidential material respectively are the most commonly used exemption categories.

A complete table of all exemptions cited for all three sectors bound by the FOI Act is listed in Appendix C.

Chart 7 – Exemptions cited (All Sectors)

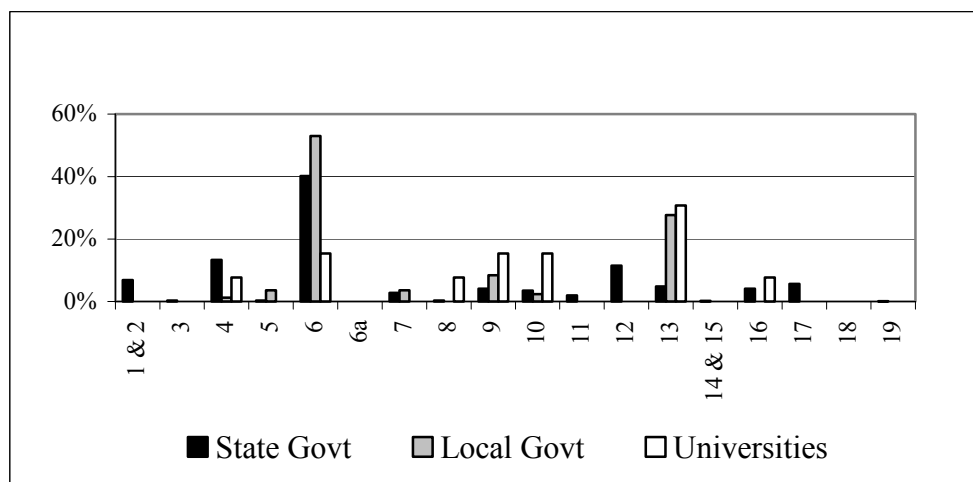


Table 6 – Explanation of Exemption categories.

Number	Exemption	Number	Exemption
1 & 2	Cabinet or Executive Council documents	10	Documents subject to legal professional privilege
3	Exempt documents communicated by another government	11	Documents relating to judicial functions etc
4	Documents affecting law enforcement and public safety	12	Documents the subject of secrecy provisions
5	Documents affecting inter-governmental or local government relations	13	Documents containing confidential information
6	Documents affecting personal affairs	14 and 15	Documents affecting the economy of the State and financial or property interests
6a	Exempt electoral records	16	Documents concerning the operations of agencies
7	Documents affecting business affairs	17	Documents subject to contempt
8	Documents affecting the conduct of research	18	Documents arising out of companies and securities legislation
9	Internal working documents	19	Private documents in public library or archival collections

Ministerial and Agency Certificates

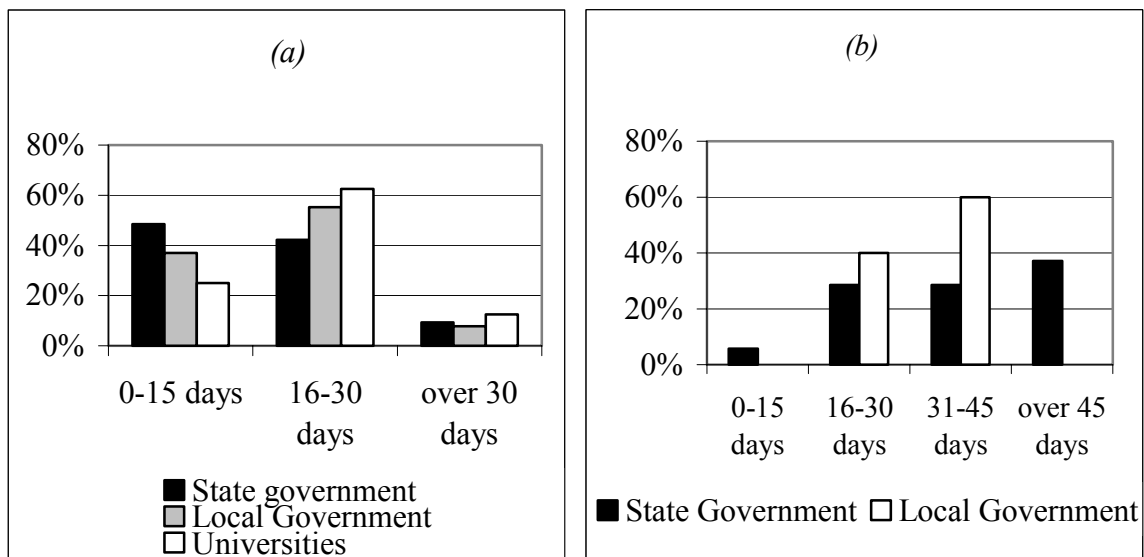
During the year no Ministerial or Agency Certificates were reported as being issued.

Time Taken to Respond

Since 1 July 2002 all agencies have been required to deal with applications made under the FOI Act as soon as practicable and or within 30 days. Should the agency take longer than this to process an application, without extending the time period in accordance with Section 14A, it will be determined that the agency has refused to provide access to the documents.

The two tables below compare the time taken to respond to applications for access and amendment.

Chart 8 (a&b) – Time taken to respond - 30 days vs 45 days (all sectors)



The first graph shows that approximately half of all applications made to State Government agencies and approximately one third of applications made to Local Government after 1 July 2002 were finalised within the first 15 days, and over 90% were finalised within the 30 day time frame. The graph also shows that approximately 10 % of applications took over 30 days to process. This may be slightly misleading. In providing statistics for this annual report some agencies were unable to report separately on the time taken to process applications made prior to 1 July 2002 and carried over into the 2002-2003 reporting year. Therefore, it is likely that some of the applications reported as being over 30 days, were made prior to 1 July 2002 and are still in fact within the 45 day timeframe allowable for applications made prior this date.

The second graph shows that for those agencies able to report separately on the time taken to process those applications made prior to 1 July 2002, approximately two thirds of applications made to State Government agencies and all of the applications made to Local government authorities were determined within the 45 day time frame.

Fees and Charges

Agencies were asked for an estimate of the cost of processing FOI applications, as well as a statement of the actual amount recovered during the year.

Each year since 1 July 2001 fees and charges for dealing with an FOI application have been increased. On 1 July 2002 the fee for an application for access was increased to \$21.50 from \$20.60 from the previous year. The requirement to waive a fee or charge for financially disadvantaged applicants ensures that these increases do not affect access to information held by agencies bound by the FOI Act.

Applications for information relating to individuals personal affairs include the first two hours spent processing the application, however in all other cases processing charges can be levied once the application is made.

This year 3 458 applications were made which were eligible for fee waiver, and a further 653 applications were made where agencies exercised their discretion not to charge the application fee. Therefore, in total 4 111 or 42 % of all FOI applications completed by agencies were considered eligible for some form of fee waiver.

In addition, Members of Parliament have a threshold of \$350 before they can be asked to pay a fee or charge. This year 413 applications from Members of Parliament received a fee waiver, 410 of which were made to State Government agencies. This represents an increase of 754%.

This year, State Government agencies estimated that it cost \$306 285 to process FOI applications of which they recovered \$136 253 or 44%.

Local Government authorities estimated that it cost \$4 403 to process which they recovered 100%.

Universities estimated that it cost \$537 to process FOI applications of which they recovered \$262 or 49%.

As with all other reporting years the above estimates are conservative. Staff data provided by agencies suggests that the cost in salaries alone for processing FOI applications are in the order of \$1 906 000. This figure does not include costs for obtaining legal advice or on-costs. In other words the three sectors combined recovered only \$140 922 or 7.3% of the overall approximate salary cost.

Amendment of Records

The FOI Act provides all members of the public with a mechanism to apply for the amendment of government records about their personal affairs, which they believe are incomplete, incorrect, out-of-date or misleading.

In the event that the agency refuses the amendment application, the applicant has the right to have a notation added to the record. The notation specifies why the applicant believes the record should be amended and should include any information which the applicant believes will make the record complete.

This year 68 new applications for amendment were received by State and Local Government agencies, an increase of over 210%. One amendment application was carried over from 2001-2002. The increase is as a result of an overall increase in applications, in particular an overall increase in amendment applications made to South Australian Police.

Of the new amendment applications received:

- 66 were received by State Government
- two were received by Local Government
- none were received by universities.

Table 7 – Amendment of Personal Information – State Government

Outcome of Amendment application	2002/2003	2001/2002	2000/2001
Amendment agreed	15	7	7
Amendment refused	45	12	14
Partial amendment	6	2	3
Notation added	10	12	11

Table 8 – Amendment of Personal Information – Local Government

Outcome of Amendment application	2002/2003	2001/2002	2000/2001
Amendment agreed	1	7	7
Amendment refused	1	12	14
Partial amendment	0	2	3
Notation added	1	12	11

The first table shows that 45 applications or in 68 % of cases applications for amendment were refused, this represents a slight increase over the 57% of applications refused last year.

Reviews and Appeals

Any person who is dissatisfied with the outcome of an application for access or amendment can seek an internal or external review.

Internal Review

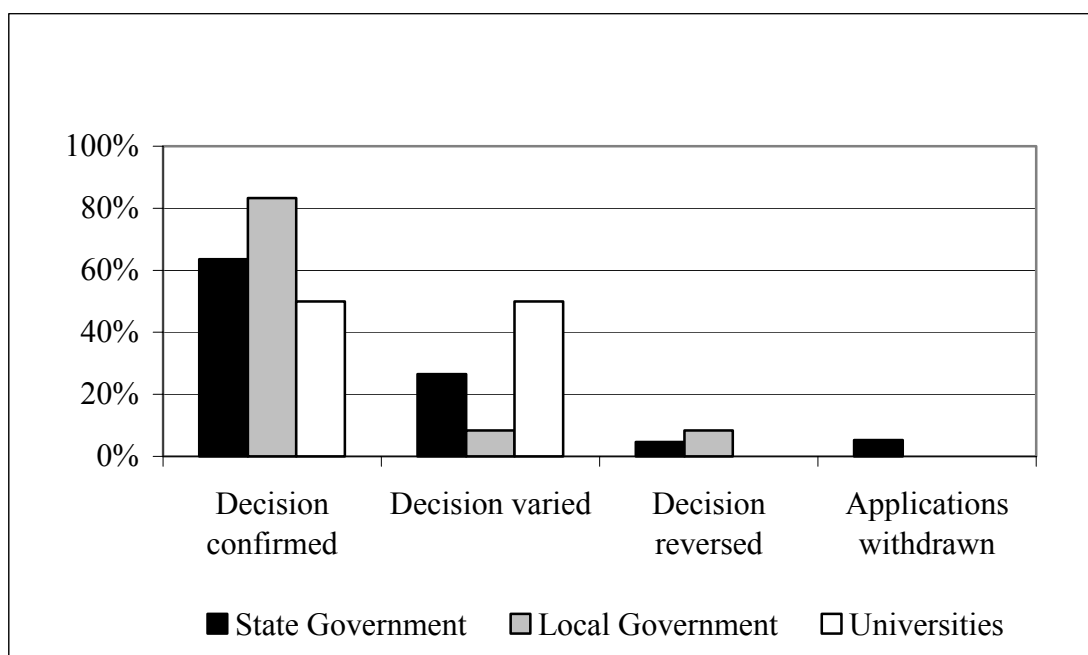
Sections 29 and 38 of the FOI Act allow any person aggrieved by a determination to seek an internal review of that determination.

Applications for internal review must be made within 30 days of the original determination and must be dealt with within 14 days.

This year 192 applications for internal review were received.

The chart below shows the results of all finalised internal review applications.

Chart 9 – Results of all finalised internal review applications



This table shows that in the majority of cases the determination made on an internal review application confirmed the original decision made by the agency. (Note: universities have only received two applications for internal review. In one case the decision was confirmed and in the other the decision was varied, hence the unusually high percentages shown in the graph above).

External Review

The two options available to members of the public who are aggrieved by an internal review decision made by an agency or where the original determination could not be internally reviewed.

One option is to make an application for external review by the Ombudsman or Police Complaints Authority (PCA). In this case all external reviews are conducted by the Ombudsman unless the determination was made by the South Australian Police or the Minister responsible for the South Australian Police. In that case the external review will be conducted by the PCA.

In the event the person remains aggrieved after an external review is conducted by the Ombudsman or PCA the applicant has the option to make an appeal to the District Court.

Details of external reviews conducted by the Ombudsman or PCA can be obtained from their annual reports.

Agencies reported that seven appeals went before the District Court; six were reported by State Government agencies and one was reported by Local Government.

Further appeal against a decision can only be made to the Supreme Court in accordance with the rules of that court.

APPENDICES

Appendix A – Objectives, Scope and Interpretations

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.*

Scope

The FOI Act, as amended by the FOI Amendment Act on 1 July 2002, now applies to all South Australian government authorities, except where an exemption applies, all local councils and South Australian universities. This means that FOI applications can be made to all of these organisations.

Interpretations

Agency

The definition of agency was amended by the FOI Amendment Act and is currently defined as:

- a) a Minister of the Crown; or*
- b) a person who holds an office established by an Act; or*
- (c) an administrative unit under the Public Sector Management Act 1995; or*
- (d) South Australia Police; or*
- (e) A council; or*
- (f) Any incorporated or unincorporated body –*
 - i. Established for a public purpose by an Act; or*
 - ii. Established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or*
 - iii. Established or subject to control or direction by the Governor, a Minister or the Crown or any instrumentality or agency of the Crown or a council (whether or not established by or under an Act or an enactment); or*
- (g) A person or body declared by the regulations to be an agency.*

Exempt agencies are listed in Schedule 2 of the FOI Act, and a number of others have been declared exempt by regulation. A list of exempt agencies is attached in Appendix D.

Accredited FOI Officer

The FOI Amendment Act amended the Act to require that an Accredited FOI Officer must deal with application for access and amendment.

Accredited FOI Officers are defined as;

- a) *the principal officer of the agency; or*
- b) *an officer of the agency who –*
 - i. *has completed training of a type approved by the Minister for an accredited FOI officer; and*
 - ii. *has been designated by the principal officer of the agency as an accredited FOI officer of the agency; and*
 - iii. *–*
 - A *in relation to an administrative unit under the Public Sector Management Act 1995 – is employed in an executive position under that Act or in a position that usually reports to an executive; or*
 - B *in relation to the South Australia Police – is an officer in South Australia Police; or*
 - C *in relation to any other agency – is employed in a position that usually reports to the principal officer of the agency or to the deputy or immediate delegate of the principal officer.*

Appendix B - Support

FOI 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 all agencies bound by the FOI Act. State Records also provides advice to agencies in relation to the operation and administration of the FOI Act. Over the 2002-2003 period State Records answered approximately 670 calls directly related to FOI.

Training Programs

In 2002-2003 there were twenty Accredited FOI Officer training sessions attended by 343 participants, and eight FOI General Awareness training sessions attended by 129 participants.

In addition, State Records commenced the delivery of combined Records Management and FOI General Awareness training in regional areas of the State. In May and June training was offered in the regional centres of Port Augusta and Kadina. Of the 129 people who attended the FOI General Awareness sessions this year, 45 attended at Port Augusta and 28 at Kadina. Further training in regional centres has been scheduled for 2003-2004.

Appendix C - Tables

Table 9 – Reasons given by State Government agencies for the restriction or refusal of access to documents

<i>Reason for refusing or restricting access</i>	<i>2002-03</i>	<i>2001-02</i>	<i>% increase / (decrease) 2001-02</i>
Application incomplete / wrongly directed	37	25	48%
Unreasonable diversion of an agency's resources	30	13	130%
Abuse of right of access (section 18(2)(a)) ¹	8	N/A	-
Fees not paid	75	72	4.1%
Deemed refusal (over 45 days to respond) ²	1	37	(97%)
Deemed refusal (over 30 days to respond) ³	51	N/A	-
Exempt document	1298	1024	26.7%
Otherwise available	56	44	27%
Documents created prior to 1 January 1987	4	2	100%
Ministerial / Agency Certificate (section 20(3))	1		100%
Exempt agency	51	-	100%
Document does not exist / lost	191	166	15%
Total	1783	1383	

Notes

1. Section 18 (2)(a) is a result of the amendment to the FOI Act that commenced operation on 1 July 2002. Therefore, there are no previous statistics to be compared to.
2. Prior to 1 July 2002 Section 19 stated that, should an agency fail to determine an application within 45 days, it is taken as a refusal of access. Any applications received prior to 1 July 2002 are processed under the old requirements of the Act.
3. As the time to deal with an FOI application has been reduced from 45 to 30 days, applications not processed by the end of that 30 day period may be deemed to be refused. The reduction in timeframe is a result of the FOI Amendment Act that commenced operation on 1 July 2002. Therefore, there are no previous statistics to be compared to.

Table 10 – Reasons given by Local Government agencies for the restriction or refusal of access

Reason for refusing or restricting access	2002-03	2001-02	% increase / (decrease) 2001-02
Application incomplete / wrongly directed	2	-	200%
Unreasonable diversion of an agency's resources	3	6	(50%)
Abuse of right of access (section 18(2)(a)) ¹	1	N/A	100%
Fees not paid	2	-	200%
Deemed refusal (over 45 days to respond) ²	-	-	-
Deemed refusal (over 30 days to respond) ³	1	N/A	100%
Exempt document	40	29	38%
Otherwise available	4	2	100%
Documents created prior to 1 January 1987	-	1	(100%)
Ministerial / Agency Certificate (section 20(3))	-	-	-
Exempt agency	-	-	-
Document does not exist / lost	13	3	333%
Total	66	41	

Table 11 – Reasons given by Universities for the restriction or refusal of access

Reason for refusing or restricting access	2002-03
Application incomplete / wrongly directed	1
Unreasonable diversion of an agency's resources	-
Abuse of right of access (section 18(2)(a)) ¹	-
Fees not paid	-
Deemed refusal (over 45 days to respond) ²	-
Deemed refusal (over 30 days to respond) ³	-
Exempt document	5
Otherwise available	-
Documents created prior to 1 January 1987	-
Ministerial / Agency Certificate (section 20(3))	-
Exempt agency	-
Document does not exist / lost	-
Total	6

Notes

1. Section 18 (2)(a) is a result of the amendment to the FOI Act that commenced operation on 1 July 2002. Therefore, there are no previous statistics to be compared to.

2. Prior to 1 July 2002 Section 19 stated that, should an agency fail to determine an application within 45 days, it is taken as a refusal of access. Any applications received prior to 1 July 2002 are processed under the old requirements of the Act.
3. As the time to deal with an FOI application has been reduced from 45 to 30 days, applications not processed by the end of that 30 day period may be deemed to be refused. The reduction in timeframe is a result of the FOI Amendment Act that commenced operation on 1 July 2002. Therefore, there are no previous statistics to be compared to.

Table 12 – Description of Schedule 1 Exemption clauses

Clause	Details	State	Local	Unis
1 & 2	Cabinet and/or Executive Council	155	0	0
3	Exempt documents communicated by another government	8	0	0
4	Law enforcement / public safety	301	0	1
5	Intergovernmental / Local Government relations	6	3	0
6	Personal Affairs	910	44	2
6a	Exempt electoral records	0	0	0
7	Business affairs	62	3	0
8	Conduct of Research	6	0	1
9	Internal working documents	94	7	2
10	Legal professional privilege	78	2	2
11	Judicial functions	45	0	0
12	Secrecy Provisions	260	0	0
13	Confidential information	110	23	4
14 & 15	Economy / financial or property interests	5	0	0
16	Operations of agencies	92	0	1
17	Subject to contempt	128	0	0
18	Companies and Securities	0	0	0
19	Public or archival collections	3	0	0
Total		2263	83	13

Table 13 – Completed Applications (State Government)

<i>Type of applications</i>	2002-03		2001-02		2000-01	
	#	%	#	%	#	%
Granted In Full	7787	82.3	7627	85.1	5952	84.7
Granted in Part	919	9.7	705	7.9	631	9
Refused	736	7.8	621	6.9	446	6.3
Deferred	21	.2	11	.3	-	-
<i>Completed applications</i>	9463	100	8964	100	7029	100
<i>Plus</i>						
Transferred in full	174		66		126	
Withdrawn	86		102		97	
Total Actually Processed	9723		9132		7252	

Table 14 – Completed Applications (Local Government)

<i>Type of applications</i>	2002-03		2001-02		2000-01	
	#	%	#	%	#	%
Granted In Full	145	74.4	64	60.4	82	67.8
Granted in Part	33	16.9	26	24.5	26	21.5
Refused	14	7.2	13	12.3	13	10.7
Deferred	3	1.5	3	2.8	-	-
<i>Total completed applications</i>	195	100	106	100	121	100
<i>Plus</i>						
Transferred in full	1		1		0	
Withdrawn	4		2		5	
Total Actually Processed	200		125		127	

Table 15 – Completed Applications (Universities)

<i>Type of applications</i>	2002-03	
	#	%
Granted In Full	10	62.5
Granted in Part	3	18.75
Refused	3	18.75
Deferred	-	-
<i>Total completed applications</i>	16	100
<i>Plus</i>		
Transferred in full	0	
Withdrawn	1	
Total Actually Processed	17	

Table 16 – State Government Applications Received by Portfolio

<i>Ministerial Portfolio</i>	<i>Personal affairs</i>	<i>Other</i>	<i>Total number of applications</i>
Administrative & Information Services	30	156	186
Education & Children's Services	57	31	88
Environment & Heritage	2	26	28
Further Education, Employment, Science & Technology	6	1	7
Human Services	6096	354	6450
Justice	1848	748	2596
Manufacturing & Trade	0	27	27
Premier & Cabinet	13	57	70
Primary Industries & Resources	9	42	51
Transport & Urban Planning	20	79	99
Treasury & Finance	4	49	53
Water, Land & Biodiversity Conservation	4	8	12
<i>Land Management Corporation</i>	<i>0</i>	<i>2</i>	<i>2</i>
<i>WorkCover Corporation</i>	<i>9</i>	<i>6</i>	<i>15</i>
Total	8098	1586	9684

Table 17 – Individual Ministerial Reporting

<i>Individual Ministerial Reporting</i>	<i>Personal affairs</i>	<i>Other</i>	<i>Total number of applications</i>
Hon Patrick Conlon	0	27	27
Hon John Hill	2	19	21
Hon Stephanie Key	0	18	18
Hon Michael Wright	0	10	10
Hon Lea Stevens	3	34	37
Hon Jane Lomax-Smith	0	12	12
Hon Rory McEwen	0	5	5
Total	5	25	30

Note

The table above does not list all Ministers as the statistics for applications made to so the missing Ministers Offices are reported as part of the overall portfolio statistics.

Appendix D – Reasons for Refusing or Restricting Access

Application incomplete or wrongly directed

Under Section 15 of the FOI Act, an agency can refuse to accept an application that 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 the 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 (so that it would no longer divert the agency's resources) before refusing to deal with it.

Abuse of the right of access

An agency may 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, 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 30 days, it is taken as a refusal of access.

(Note: for applications made prior to 1 July 2002 the act stated that should an agency fail to determine an application within 45 days, it was 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 person 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 E – FOI Act Schedule 1 Exempt Documents

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 communicated by another government

This refers to documents containing information communicated to agencies bound by the Act 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 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 affecting 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 of 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 engaged in competitive activities.

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 State Governments also fall under this category.

Clause 19 - 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 their disclosure to members of the public. This only refers to private documents placed in a library or archives (not official records).

Appendix F – Exempt Agencies – State Government

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

* * * * *

- e) all Royal Commissions;
- f) the Motor Accident Commission in respect of any matter relating to a claim or action under Part 4 of the *Motor Vehicles Act 1959*;

* * * * *

- h) the Auditor-General;
- i) the Attorney-General, in respect of functions related to the enforcement of the criminal law;
- j) the Parole Board;
- k) the Solicitor-General, the Crown Solicitor and the Director of Public Prosecutions;
- l) the Ombudsman and the Police Complaints Authority;
- 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) a Minister of the Crown in respect of the administration of the former South Australian Development Fund or the Industry Investment Attraction Fund (or a fund substituted for the Industry Investment Attraction Fund);
- p) South Australia Police in relation to information compiled by—
 - I. the former Special Branch; or
 - II. the Operations Planning and Intelligence Unit; or
 - III. the Operations Intelligence Section (or a body substituted for the Operations Intelligence Section); or
 - IV. the Anti-Corruption Branch (or a body substituted for the Anti-Corruption Branch);
- q) the Local Government Association.

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 Essential Services Commission established under the *Essential Services Commission Act 2002*;
- 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*.