

Freedom of Information Act 1991

ANNUAL REPORT
YEAR ENDED
JUNE
2007



**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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The Hon Michael Wright MP

MINUTE



**Government
of South Australia**

MINUTES forming ENCLOSURE to

File 07SF00005/MOA

Reg 07/03824

**Minister for
Industrial Relations
Minister for Finance
Minister for Government
Enterprises
Minister for Recreation,
Sport and Racing**

To HON MIKE RANN MP
PREMIER

Subject

**TABLING OF ANNUAL REPORT IN PARLIAMENT – FREEDOM OF
INFORMATION ACT 1991 ANNUAL REPORT, YEAR ENDED JUNE 2007**

Pursuant to section 54 of the *Freedom of Information Act 1991* I enclose three copies of the *Freedom of Information Act 1991* Annual Report, year ended June 2007 for tabling in both Houses of Parliament, no later than 22 November 2007. Thank you for your assistance.

A handwritten signature in black ink, appearing to read 'Michael Wright'.

Michael Wright MP
**MINISTER FOR INDUSTRIAL RELATIONS
MINISTER FOR FINANCE
MINISTER FOR GOVERNMENT ENTERPRISES
MINISTER FOR RECREATION, SPORT AND RACING**

14 / 11 / 2007

Enc.

TABLE OF CONTENTS

FOREWORD	1
THE YEAR IN REVIEW	2
Introduction	2
Agencies bound by the FOI Act	2
Amendment to the Freedom of Information Act 1991 section 40(1).....	2
State Government	2
Freedom of Information Management System (FOIMS).....	3
FOI Advice Service	3
Accredited FOI Officers	4
FOI Officer Resourcing in Agencies.....	4
General Awareness Training	5
FOI Training in Local Government.....	5
FOI Process Guides and Information Sheets.....	5
Reporting to the Minister	5
Contracts with Approved Confidentiality Clauses.....	5
Documents provided outside of the FOI process	6
Documents created prior to the 1 January 1987	6
Correction.....	6
Consistency of Statistical Data.....	6
STATISTICAL SUMMARY	7
State Government Summary.....	8
Local Government Summary	10
Universities Summary	12
ACTIVITY UNDER THE FOI ACT	14
Applications received for access	14
Reasons for Refusal or Restriction.....	18
Exemptions claimed	19
Time Taken to Respond.....	20
Cost of FOI.....	21
Fee Waiver.....	21

Applications from Members of Parliament.....	22
Applications from the Media	22
Applications from the Lawyers or Agents	23
Broadcast Applications	23
Amendment of Records Relating to Personal Affairs.....	24
Reviews and Appeals.....	25
APPENDICES.....	28
Appendix A – Objectives, Scope and Interpretations.....	29
Appendix B - Tables	31
Appendix C – Reasons for Refusing or Restricting Access	47
Appendix D – FOI Act Schedule 1 Exempt Documents	49
Clause 10 - Documents subject to legal professional privilege	50
Clause 11 - Documents relating to judicial functions, et cetera	50
Clause 18 - Documents arising out of companies and securities legislation	51
Appendix E – Exempt Agencies – State Government	52

FOREWORD

This year there were 11 381 applications for access to information held by government under the *Freedom of Information Act 1991* (the FOI Act). This figure represents an increase of 512 (5%) applications compared with the previous year.

Despite the overall increase in the number of applications received in 2006–07, 8465 (81%) of the 10 443 processed applications were finalised within the 30 day time period, an improvement on last year's figure of 58%. In addition there was a 20% decrease in the number of extensions of time to deal with an application. Generally, an extension is granted where the request involves access to a large number of documents. This can often result in significant time required by agencies to search and examine records to satisfy the request and places an importance on the need for agencies to have adequate records management systems and processes in place.

This reporting year represents the first year all agencies were required to report their FOI statistics through the Freedom of Information Management System (more commonly referred to as FOIMS). Agencies are required to keep information relating to FOI activities up to date in FOIMS, which significantly reduces the burden on government in regard to the reporting obligations of agencies.

The total cost to government for the administration of FOI for the reporting year was estimated to be \$4.7 million. This includes costs associated with processing applications, internal and external reviews, seeking legal advice, training and reporting. Only the direct costs associated with the processing of applications can be recovered through regulated fees and charges, with only \$115 410 (or 2%) recouped by agencies.

While there was a slight reduction (9%) in applications made by Members of Parliament (MPs) compared to the previous reporting year, the figure reported still represents a significant increase in these applications since the \$1000 fee free threshold for MPs was introduced in November 2004.

Agencies reported a significant increase in applications made by lawyers or agents acting on behalf of individuals. This reporting year saw 38% more of these applications made compared with the previous year's figure and represented 46% of all applications.

State Records of South Australia (State Records) continues to provide advice and support to the public and FOI officers across government. This year they responded to over 1000 telephone enquiries and 500 emails directly related to FOI.

I would like to thank State Records and FOI officers across government. Their hard work and commitment to the objects of the FOI Act contributes to more effective participation by members of the public in the processes of government and promotes openness and accountability in government.

The Hon Michael Wright MP
MINISTER FOR FINANCE

THE YEAR IN REVIEW

Introduction

State Records of South Australia (State Records) provides support to the Minister for Finance in the administration of the *Freedom of Information Act 1991* (the FOI Act). This support includes preparation of the FOI Annual Report on the Minister's behalf.

In order to produce the Annual Report all agencies bound by the FOI Act are required to make available to State Records statistical information relating to the processing of Freedom of Information (FOI) applications. Statistics collected include the number and type of FOI applications made to agencies and the outcome of those applications.

Pursuant to Section 54AA of the FOI Act, reporting requirements were gazetted on 15 June 2006.

Agencies bound by the FOI Act

Section 4 of the FOI Act defines those agencies bound by the Act. The definition is inclusive of State Government agencies, Statutory Authorities, Local Government Authorities (ie Municipal and District Councils) and the South Australian Universities. Schedule 2 of the FOI Act and the *Freedom of Information (Exempt Agencies) Regulations 1993* define those agencies that are exempt from the FOI Act (refer to Appendix E).

Throughout this report a reference to agencies refers to those entities bound by the FOI Act in the three sectors, ie State Government, Local Government and the Universities.

Amendment to the Freedom of Information Act 1991 section 40(1)

The Statutes Amendment (New Rules of Civil Procedure) Act 2006 amended the *Supreme Court Act 1935* which included the removal of terminology that is no longer used in the Supreme Court Rules of Civil Procedure. It also made related amendments to other legislation including the FOI Act. The words 'by leave' have been replaced with the words 'with the permission' in section 40(1) of the FOI Act. These amendments came into force on 1 June 2007. Section 40(1) now reads as follows:

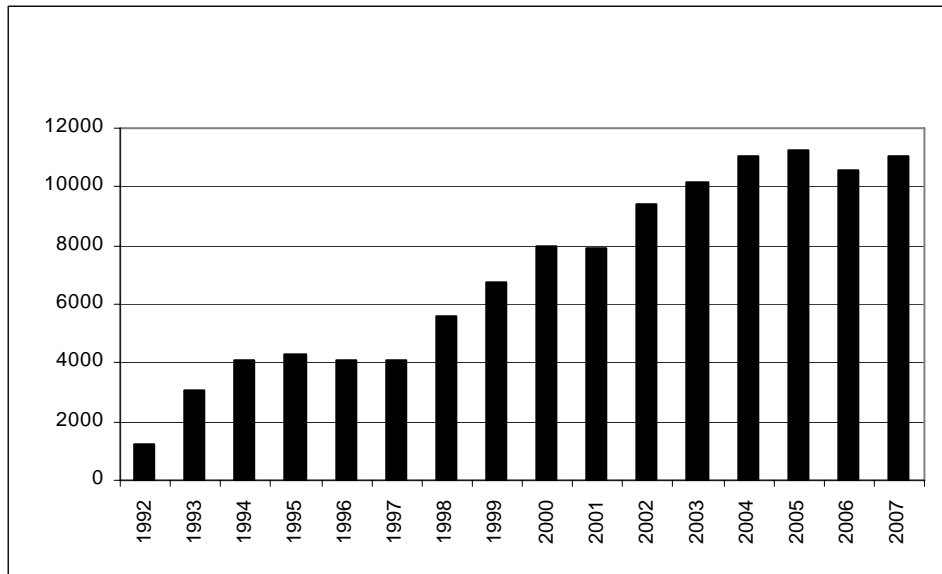
An agency that is aggrieved by a determination made on a review under Division 1 may, with the permission of the District Court, appeal against the determination to the District Court on a question of law.

State Government

Under the FOI Act applications can be made for access to documents, amendment of personal information, and internal review of decisions. Applicants also have the right to an external review of a decision made under the Act (by the Ombudsman or Police Complaints Authority) and the right to appeal to the District Court.

The FOI Act commenced on 1 January 1992. Since that time, there has been a total of 112 470 applications for access made to South Australian State Government agencies. Chart 1 shows the breakdown of these applications over the past 16 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



Freedom of Information Management System (FOIMS)

The Freedom of Information Management System, known as FOIMS, is a web-based database that provides a secure and efficient recording system for all agencies to manage their FOI applications. FOIMS provides the Government with a system to allow accurate and more real-time reporting on the operation of the FOI Act in South Australia.

Most agencies are now registered and using FOIMS, many commencing to use the system on 1 July 2005. State Records derives annual FOI statistics from FOIMS to enable this report to be created. This delivers improved efficiencies in all agencies and provides more accurate statistics for reporting throughout the year.

The most recent upgrade to FOIMS was implemented in June 2007 with the addition of a reporting function that now allows agencies to extract Annual Reporting statistics for their agency only. State Records continues to offer FOIMS support and assistance to agencies via telephone and email. Over the last financial year, State Records answered 289 telephone and 210 email enquiries from agencies regarding FOIMS.

FOI Advice Service

State Records provides an advice service for members of the public seeking information on how to access documents held by 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 2006–07 period State Records answered 798 telephone and 298 email requests directly related to FOI. These figures exclude the FOIMS telephone and email enquiries mentioned above.

Accredited FOI Officers

Section 4 of the FOI Act establishes the principal officer of an agency as an Accredited FOI Officer and allows the principal officer to designate other officers within the agency as Accredited FOI Officers, provided they attend the approved training and are either:

- employed in an executive level position under the *Public Sector Management Act 1995* or in a position that usually reports to an executive; or
- a Police Officer with the South Australia Police; or
- an officer of a University or a Local Government agency employed in a position that usually reports to the principal officer or his or her deputy or immediate delegate.

Accredited FOI Officers are responsible for dealing with FOI applications on behalf of their agency and must make a determination within 30 calendar days of the agency receiving an application. Determinations must be dealt with independently and free from any influence from within or outside the agency, although consultation is allowed for under the Act.

In 2006–07, State Records provided nine Accredited FOI Officer training sessions attended by 169 participants. The Australian Government Solicitor’s Office facilitated the sessions on behalf of State Records.

FOI Officer Resourcing in Agencies

In addition to reporting statistical information on FOI applications, agencies were also required to report the number of full-time-equivalent staff dealing with FOI within their agency, including their salary ranges. While this information is required to provide an approximation of the cost of FOI to government, it also gives an indication to the classification level of the Accredited FOI Officers responsible for making FOI determinations.

The information provided by agencies seems to indicate that, in a number of agencies, FOI may be being dealt with by staff at lower classifications than that intended by the legislation. The intent of the FOI legislation is that Accredited FOI Officers holds a senior position that reports to an Executive, and where it is impracticable to do so, the responsibility for FOI is not delegated below principal officer level¹. This recognises the level of decision-making required when dealing with FOI applications. State Records will be addressing this issue through an awareness program delivered to agencies.

¹ Second Reading Speech. Freedom of Information (Miscellaneous) Amendment Bill; House of Assembly 28 November 2001

General Awareness Training

State Records conducted four FOI General Awareness training sessions in 2006–07, which 69 participants attended.

During 2006–07, State Records continued the development of FOI awareness education that will be delivered in an on-line environment. This will provide broad based awareness training to agencies in relation to FOI administration and provide greater access to training in regional and remote areas.

The aim of the on-line training is to raise awareness of FOI across government while furthering the objects of the FOI Act and promoting openness in government and accountability of Ministers and agencies.

The FOI awareness training will be incorporated into the State Records on-line records management training.

FOI Training in Local Government

The Local Government Association of South Australia (LGA) in conjunction with Norman Waterhouse conducted an FOI training session for principal officers and Accredited FOI Officers of Local Government authorities. The Ombudsman of South Australia was involved in the delivery of this training, which was attended by 18 participants.

FOI Process Guides and Information Sheets

The FOI Process Guides and FOI Information Sheets provide guidelines and advice for FOI Officers when processing FOI applications. These documents are regularly updated as part of the process to continually improve the quality of general advice provided to agencies and to reflect any regulatory changes to the FOI legislation. The Process Guides and Information Sheets can be found at <http://www.archives.sa.gov.au/foi/foiadmin/index.html>.

Reporting to the Minister

Throughout the year regular reporting is provided to the Minister on non-personal FOI applications received by the major State Government agencies. The reports for the Minister are collated from the information that is entered by agencies into FOIMS.

Contracts with Approved Confidentiality Clauses

The amendments to the FOI Act, which came into force on 1 January 2005, included a requirement to report annually the number of contracts containing approved confidentiality clauses (refer to Appendix D for a description of exemption Clause 13).

For the 2006–07 reporting year, agencies subject to the FOI Act reported 76 contracts containing an approved confidentiality clause. This was an increase of 19 from the previous year. Of the 76 contracts reported:

- State Government agencies reported entering into 23 contracts
- Local Government reported entering into 13 contracts
- Universities reported entering into 40 contracts

Documents provided outside of the FOI process

The Objects of the FOI Act makes it quite clear that the legislation is not intended to prevent the access to documents or amendments of personal records outside of FOI wherever possible. Access outside of FOI is usually provided through inspection, purchase or free of charge. A description of the types of documents that may be available can be found in the agency's Information Statement. Information Statements are required to be published either in an agency's Annual Report or on an agency's website.

There were 84 cases where State and Local Government agencies refused an FOI application and provided access, or restricted access, outside of FOI.

Documents created prior to the 1 January 1987

Section 20(1)(e) of the FOI Act allowed an application to be refused because it came into existence before 1 January 1987. However this section does not apply if 20 years has passed since the document was created (section 20(2)(c)).

From 1 January 2007 agencies are no longer able to use this clause to refuse an application.

Correction

When reviewing the data in preparation for this year's report a data error was identified that occurred in the previous reporting year. In the Annual Report for 2005–06 it was incorrectly reported that 203 applications were received from Members of Parliament. This figure should have been 660 applications, which would have represented an increase of 26% on the previous reporting year (ie 2004–05), not a decrease of 61% as originally stated.

The error occurred when deriving the figures from the new Freedom of Information Management System (FOIMS), through a misunderstanding of the data set required to report this information. A procedure has now been developed to ensure this error does not reoccur.

Consistency of Statistical Data

Statistical reports were run against the FOIMS database over the week ending 31 August 2007. The figures used in this annual report are accurate as at that date.

Agencies can retrospectively update information in the FOIMS and it is, therefore, probable that the same statistical reports, if run at a later date, will vary from those used in this report.

STATISTICAL SUMMARY

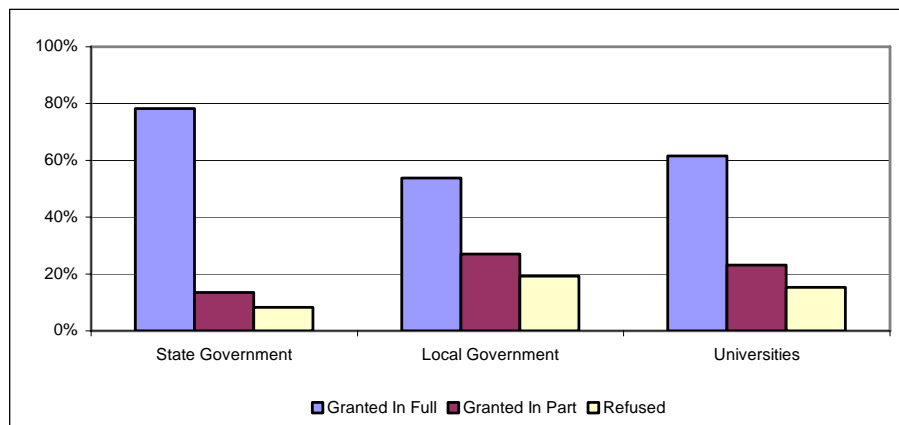
This year there were 11 381 FOI applications for access received by all agencies bound by the FOI Act. The number of received applications increased by 512 (5%) compared to the previous year. Determinations were issued for 10 212 applications.

Of the 11 381 access applications received:

- 11 052 were received by State Government agencies (an increase of 456 applications) with 10 154 applications processed and 9936 successfully determined;
- 313 were received by Local Government (an increase of 52 applications) with 273 applications processed and 263 successfully determined; and
- 16 were received by the South Australian Universities (an increase of four applications) with all 16 applications processed and 13 successfully determined.

Chart 2 shows that for 78% (7754) of FOI applications made to State Government agencies, full access was granted to the documents requested. Local Government reported that in 54% (137) of cases full access was granted and Universities 62% (8). The outcome of access determinations for all sectors is detailed in tables 12–14 in Appendix B.

Chart 2 – Outcome of Access Applications - All Sectors



Compared to the previous reporting year, State Government agencies provided full access to documents in 1% less cases, Local Government in 9% less cases, while Universities provided full access in 29% more cases. Partial access to documents has increased by 14% compared to the last reporting year. Overall, agencies are refusing access to documents in the same proportion of cases.

Agencies reported a 20% decrease in the number of extensions granted this reporting year. Extensions can be granted under section 14A of the FOI Act when an applicant seeks access to a large number of documents, requires extensive searching through large amounts of information, or involves consultation that cannot reasonably be carried out within the 30 day time limit.

State Government Summary

For the 2006–07 reporting year there were 11 052 FOI applications for access received by State Government agencies. Of these, agencies processed² 10 154, determining 9936 applications. This represents a 19% increase in FOI applications processed compared to 2005–06.

Key findings from the statistics provided by State Government agencies include:

- 81% of applications processed in 2006–07 were finalised within 30 days, which is 25% more than the previous reporting year
- Compared with the previous year the number of applications received for non-personal information increased by 128%
- Overall there was a 19% decrease in the number of personal affairs applications received compared with the previous reporting year
- The number of personal affairs applications determined also decreased. Of the applications determined, 66% were personal and 34% were non-personal applications (see Chart 3a)
- The percentage of applications where full access was given decreased by 1% from the previous reporting year (see Chart 3b)
- 1400 extensions were granted this year compared to 1729 extensions the previous year, representing a decrease of 19%
- A total of 1693 unfinished applications are to be carried over to 2007–08. This is a decrease of 22% compared to the previous year
- There was an 11% decrease in the number of applications received from Members of Parliament from 655 applications last year to 584 applications this year

For the 2006–07 reporting year, State Government agencies reported having entered into 23 contracts that contained an approved confidentiality clause as defined by Clause 13 of Schedule 1 of the FOI Act. The number of contracts with approved confidentiality clauses decreased by three compared to the previous reporting year.

² “Processed” encompasses the issuing of a determination, transferring an application to another agency, or ceasing the FOI process as the application has been withdrawn by the applicant.

Chart 3a shows the proportion of access applications determined for personal affairs compared to non-personal. Chart 3b shows the outcome of all access applications in State Government agencies.

Chart 3a - Personal and non-personal access applications determined - State Government (9936 determined access applications 2006–07)

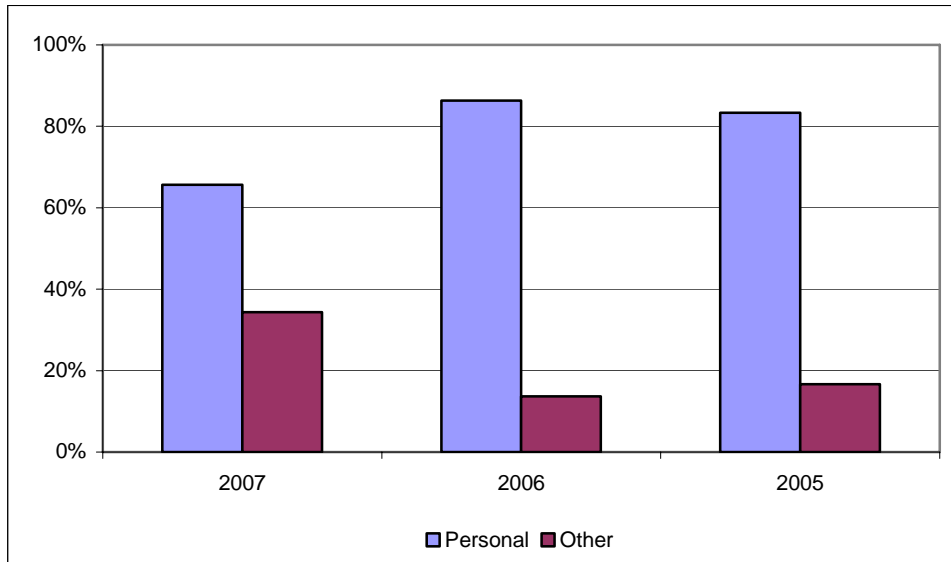
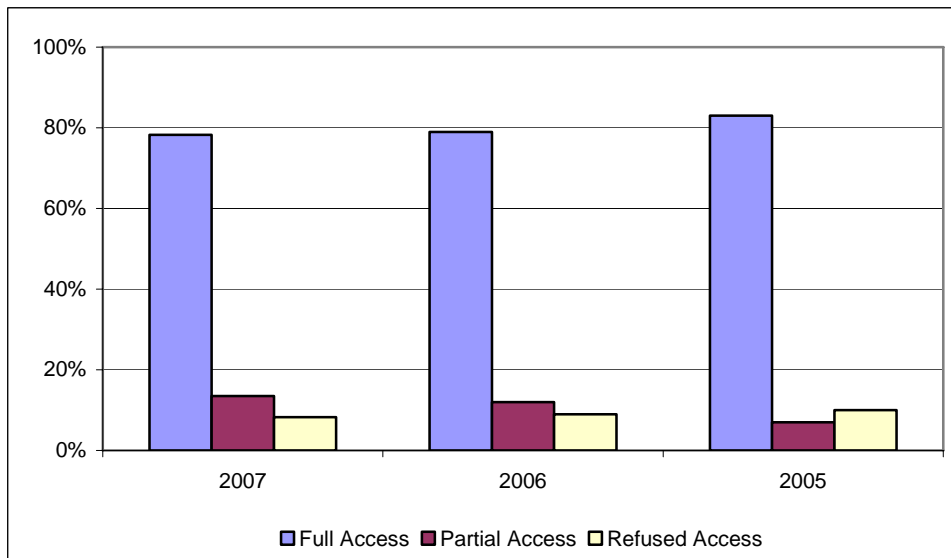


Chart 3b – Outcome of all access determinations - State Government (9936 determined access applications 2006–07)



Local Government Summary

This reporting year there were 313 FOI applications for access received by Local Government. This represents a 20% increase compared to the previous reporting year. Local Government processed 273 applications of which 263 were determined.

Key findings from the statistics provided by Local Government include:

- 78% of applications in 2006–07 were processed within 30 days, which is 1% more than the previous year
- A 5% decrease in personal affairs applications received compared to the previous reporting year
- An increase of 23% in non-personal affairs applications received compared to the previous reporting year
- A 50% decrease in the number of applications that required the time limit to be extended. There were 22 extensions granted this year
- A total of 68 unfinished applications are to be carried over to the 2007–08 reporting year. This represents an increase of 21 compared to the previous year
- 14 applications were received from Members of Parliament compared to four in the previous year

For the 2006–07 reporting year, Local Government reported having entered into 13 contracts that contained an approved confidentiality clause as defined by Clause 13 of Schedule 1 of the FOI Act. The previous year it was reported that Local Government agencies entered into 19 contracts containing approved confidentiality clauses.

Chart 4a shows the proportion of access applications determined for personal affairs compared to non-personal. Chart 4b shows the outcome of all access applications determined in Local Government.

Chart 4a - Personal and non-personal access applications determined - Local Government (263 determined access applications 2006–07)

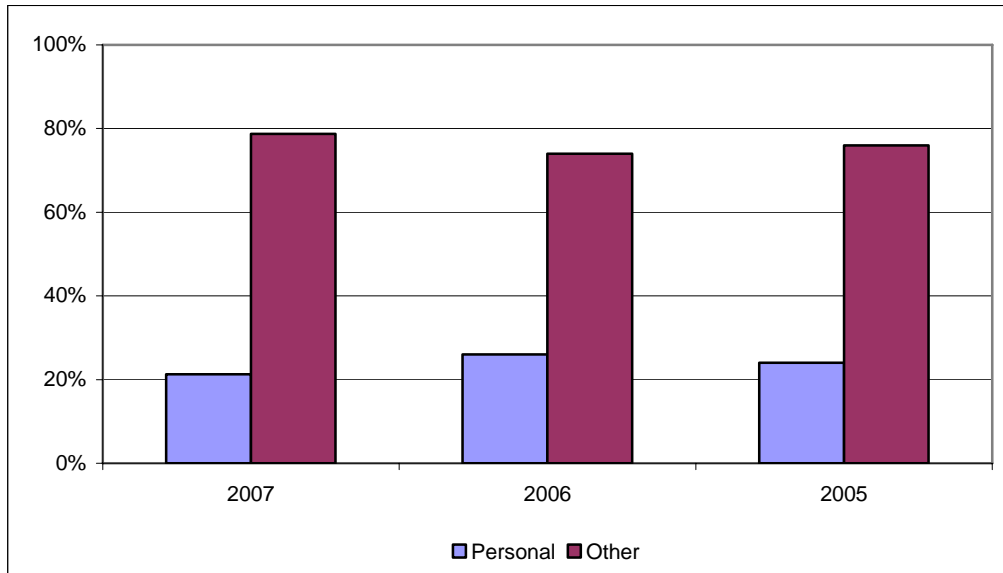
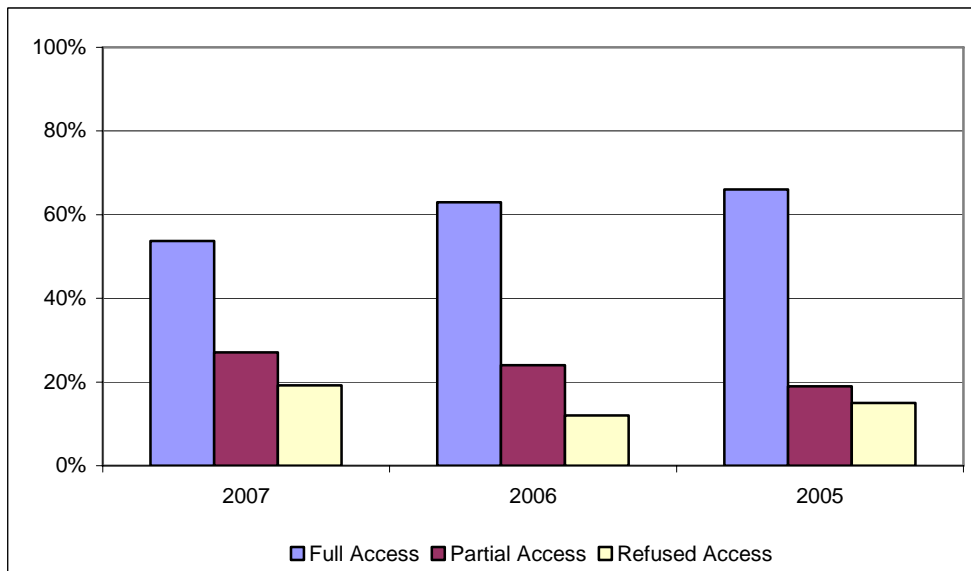


Chart 4b – Outcome of all access determinations - Local Government (263 determined access applications 2006–07)



Universities Summary

South Australian Universities reported receiving 16 access applications, which represents a 33% increase compared to the previous year.

Key findings relating to statistics provided by Universities include:

- At the close of the reporting year, 16 applications were processed and all but one of these within the 30 day time frame
- 14 personal affairs applications were received compared to six in the previous reporting year
- Two non-personal applications were received compared to six in the previous reporting year
- No applications were received from a Member of Parliament

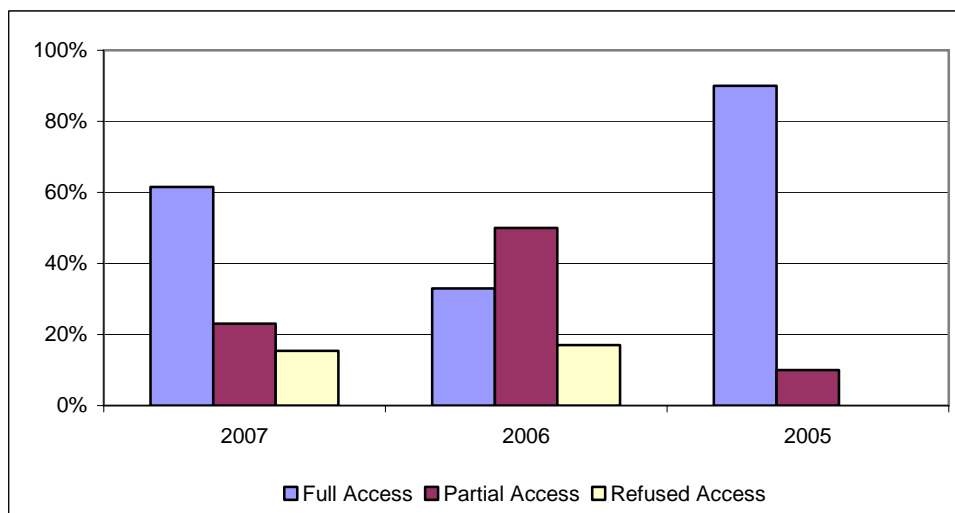
For the 2006–07 reporting year, Universities reported having entered into 40 contracts that contained an approved confidentiality clause as defined by Clause 13 of Schedule 1 of the FOI Act. This is an increase of 28 when compared to the previous year.

Chart 5a shows the proportion of access applications determined for personal affairs compared to non-personal. Chart 5b shows the outcome of all access applications in Universities.

Chart 5a - Personal and non-personal access applications determined - Universities (13 determined access applications 2006–07)



Chart 5b – Outcome of access determinations – Universities (13 determined access applications 2006–07)



ACTIVITY UNDER THE FOI ACT

Applications received for access

Volume

The combined results of annual statistical returns for all agencies bound by the FOI Act show that there were 11 381 FOI applications for access received during the reporting year.

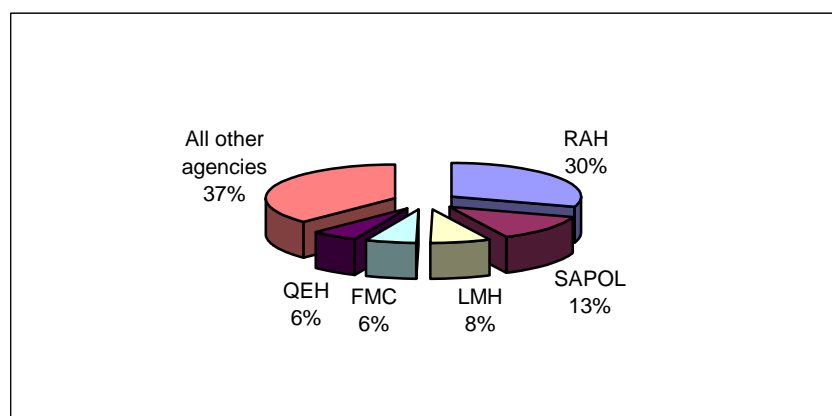
Of the 209 agencies that provided statistics for the 2006–07 Annual Report, 28% (40) of State Government agencies and 47% (29) of Local Government agencies reported no FOI applications being dealt with during 2006–07.

Since 1999–2000 the top five agencies in terms of volume of applications have been reported in detail for this report. The examination of those same agencies has continued for each subsequent year. In 2002, a sixth agency, the Lyell McEwin Hospital, was included due to a marked increase in the volume of applications received. For the 2006–07 reporting year, only the top five agencies have been reported due to the variance in numbers between the 5th and 6th agencies. These top five agencies represent 63% of the total applications received by agencies across the three sectors bound by the FOI Act.

Table 1 – Percentage increase / decrease of applications received by the top five agencies

Agency	2006–07	2005–06	% Change
Royal Adelaide Hospital	3407	3204	6%
South Australia Police (SAPOL)	1469	1685	(13%)
Lyell McEwin Hospital	859	631	36%
Flinders Medical Centre	717	752	(5%)
Queen Elizabeth Hospital	656	675	(3%)

Chart 6 – Percentage of access applications received in 2006–07 – All Sectors



Type

Agencies are asked to distinguish between access applications relating to the applicant's personal affairs and those relating to other matters.

Applications 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

Those applications relating to other matters can include:

- An applicant applying for the personal information of another person without consent
- Applications for policy or administrative documents

Tables 2, 3 and 4 show the number and percentage of applications made for access to information relating to both personal affairs and other matters.

Table 2 – Breakdown of Applications received – State Government

<i>Type of applications</i>	<i>2006–07</i>	<i>2005–06</i>	<i>% Change</i>
Personal affairs	7 382	9 082	(19%)
Other	3 670	1 610	128%
Total applications	11 052	10 692	3%

Table 3 – Breakdown of Applications received – Local Government

<i>Type of applications</i>	<i>2006–07</i>	<i>2005–06</i>	<i>% Change</i>
Personal affairs	63	66	(5%)
Other	250	203	23%
Total applications	313	269	16%

Table 4 – Breakdown of Applications received – Universities

<i>Type of applications</i>	<i>2006–07</i>	<i>2005–06</i>	<i>% Change</i>
Personal affairs	14	6	133%
Other	2	6	(67%)
Total applications	16	12	33%

Applications carried over into the next reporting year

Not all applications are finalised within the reporting year. Unfinished applications are carried over into the next reporting year.

2216 unfinished applications were carried forward from 2005–06 by State Government agencies into this reporting year. Local Government carried 47 applications forward and there were six applications carried forward by the Universities.

A total of 1762 applications remained undetermined at 30 June 2007 and have been carried over into the 2007–08 reporting year. Of these:

- 1693 were made to State Government agencies
- 68 were made to Local Government
- one was made to a University

At the close of the reporting year 456 (27%) of the 1693 unfinished applications received by State Government agencies were still within the 30 day time frame for issuing a determination. This represents an increase in the percentage of unfinished applications still being within the 30 day timeframe and, therefore, not yet overdue.

Of the 68 unfinished applications made to Local Government, 33 applications (49%) were still within the 30 day time frame for issuing a determination. This also represents an increase in the number of unfinished applications still being within the 30 day time frame.

The one unfinished application made to Universities was not within the 30 day time frame for issuing a determination.

Extensions

Section 14A of the FOI Act allows agencies to extend the time period to deal with an application.

Pursuant to section 14A, the principal officer of an agency can extend the 30 day period where an FOI application is for access to:

- a large number of documents, or requires a search to be conducted through a large quantity of information and dealing with the application within the 30 day period would unreasonably divert the agencies resources in the exercise of its function, or
- a document that requires consultation under Part 3 Division 2 of the FOI Act that cannot be reasonably undertaken within the time period.

Overall, 1422 applications were extended, with 98% extended by 28 days or more.

Of the total number of applications extended:

- 1400 were to State Government
- 22 were to Local Government

State Government agencies reported a decrease of 329 (19%) extensions granted compared to the previous reporting year. Of the 1400 extensions reported by State Government agencies,

1300 extensions were granted to the Royal Adelaide Hospital, which is 200 less than the previous reporting year.

Of the 22 extensions reported by Local Government, 7 extensions were granted to the City of Salisbury, with the remaining 15 extensions spread evenly across a number of councils.

Reasons for Refusal or Restriction

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

Table 5 shows the breakdown of the reasons given by agencies across all sectors for the restriction or refusal of access to documents. Tables for each specific sector can be found in Tables 9–11 in Appendix B.

Table 5 illustrates that in the majority of cases where access was restricted or refused, the document being sought was determined to be exempt. This was consistent for State and Local Government and Universities.

Table 5 – Reasons cited for refusing or restricting access - All Sectors

<i>Details</i>	<i>State</i>	<i>Local</i>	<i>Uni</i>
Application incomplete/wrongly directed	10	1	0
Unreasonable diversion of an agency's resources	24	2	1
Abuse of right of access (Section 18(2)(a))	19	0	0
Fees not paid	25	0	0
Deemed refusal (over 30 days to respond)	110	0	0
Exempt document	1512	74	3
Otherwise available	75	9	0
Documents created prior to 1 January 1987	3	2	0
Exempt agency	14	0	0
Document does not exist/lost	279	21	1
<i>Total</i>	<i>2071</i>	<i>109</i>	<i>5</i>

Exemptions claimed

Table 6 shows that the most claimed exemption category reported was documents affecting personal affairs. The exemption relating to documents affecting law enforcement and public safety was also claimed in many cases, as were the internal working documents, and secrecy provisions exemptions. More than one exemption may be used when refusing or restricting access. For example, while the Universities exempted three applications from access, five exemptions were applied.

Table 6 – Number of exemptions applied under Schedule 1 of the FOI Act – All Sectors

<i>Clause</i>	<i>Details</i>	<i>State</i>	<i>Local</i>	<i>Unis</i>
1 & 2	Cabinet and/or Executive Council	70	0	0
3	Exempt documents communicated by another government	1	1	0
4	Law enforcement and public safety	475	3	0
5	Intergovernmental / Local Government relations	6	0	0
6	Personal affairs	966	31	0
6a	Exempt electoral records	0	0	0
7	Business affairs	96	7	0
8	Conduct of research	4	0	0
9	Internal working documents	190	5	3
10	Legal professional privilege	54	8	0
11	Judicial functions	75	0	0
12	Secrecy provisions	124	2	0
13	Confidential information	73	11	0
14 & 15	Economy / financial or property interests	5	0	0
16	Operations of agencies	26	2	2
17	Subject to contempt	9	0	0
18	Companies and Securities	0	0	0
19	Public or archival collections	0	0	0
Total		2174	70	5

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 within a 30 day time period. Should the agency take longer than this time 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.

In some cases, the applicant agrees to an extension of time without a formal extension under section 14A being sought, which leaves open the option for internal review should the applicant decide to seek one.

The chart below compares the time taken to respond to applications for access and amendment across the three sectors.

Chart 7 – Time taken to respond - All Sectors

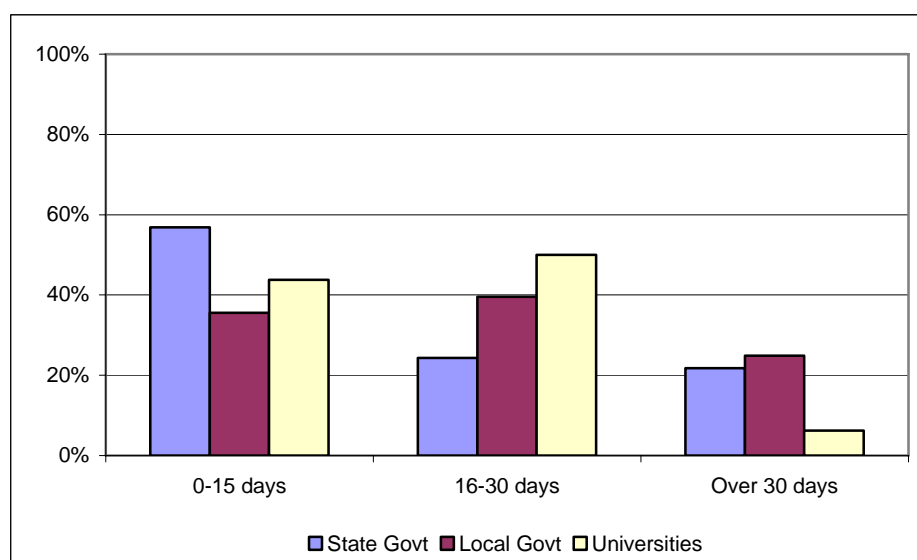


Chart 7 shows that over half of all processed applications made to State Government agencies, approximately one third of applications made to Universities, and almost half of all applications made to Local Government were finalised within the first 15 days. In 81% of cases, determined applications across the three sectors were finalised within the 30 day time frame, which is a 25% increase compared to the previous reporting year.

Cost of FOI

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 1993*.

Agencies were required to report the regulated fees and charges that could be levied for processing FOI applications and the actual amount recovered during the year. Fees and charges can be levied for:

- An application fee
- Costs to the agency of finding, sorting, compiling and copying documents in order to carry out the FOI process and undertake any consultations required under the Act
- Actual cost incurred by the agency in producing a copy, eg a photocopy or transcript

The cost to government for the administration of FOI, including the processing of FOI applications (as outlined above), training, seeking legal advice, conducting reviews and the management of FOIMS, was estimated to be \$4.7 million for the reporting year. Agencies reported that \$115 410 (2%) was recovered.

The amount recovered in the 2006–07 reporting year for the three sectors was as follows:

- State Government agencies reported recovering approximately \$111 758;
- Local Government authorities reported recovering approximately \$3627; and
- Universities reported recovering approximately \$25.

The Crown Solicitor's Office, which forms part of the Attorney-General's Department, advised of an increase in the provision of advice on FOI applications that it has attributed to:

- a general increase in public awareness of their rights to information
- political requests

It is estimated that the workload of the Crown Solicitor's Office through 2006–07 equated to salary costs of \$218 632.

The Police Complaints Authority estimated that the workload in conducting FOI reviews through 2006–07 equated to a salary cost of approximately \$15 000.

Fee Waiver

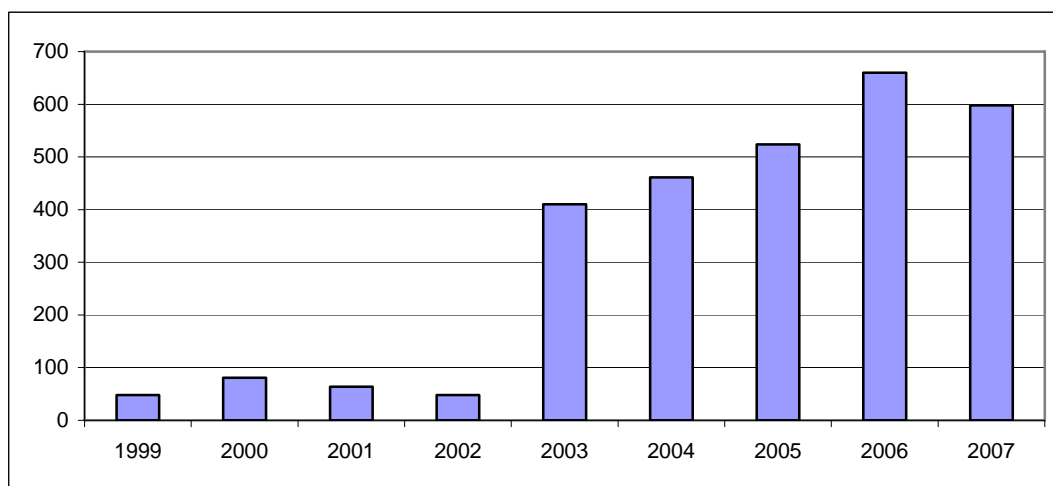
This reporting year 2232 applications received were eligible for fee waiver, and in a further 1797 cases agencies exercised their discretion not to charge the application fee. Therefore, in total 4029 or 35% of all FOI applications were considered eligible for, or received, some form of fee waiver. This is 1% less than the previous reporting year.

Applications from Members of Parliament

One type of fee waiver provided in the FOI Act concerns applications made by Members of Parliament. Members of Parliament have a fee free threshold of \$1000 before they can be asked to pay a processing charge.

This reporting year 598 applications were received from Members of Parliament; of these 584 were made to State Government agencies and 14 to Local Government. 598 applications represents a decrease of 9% compared to the 2005–06 reporting year (see Correction on page 9).

Chart 8 – Number of applications by Members of Parliament – All Sectors



In 67 of the cases, an extension to the time to respond to applications from Members of Parliament was granted under section 14A. The number of days extended ranged from 11 to 255, with the average being 60 days.

Applications from the Media

There were 258 applications received from the media in this reporting year. This number represents an increase of 66% when compared to 155 applications in 2005–06. A number of the applications from the media were broadcast applications, which are categorised by having the same wording and being made at the same time to multiple agencies by the one applicant (see section on *Broadcast Applications*).

Applications from the Lawyers or Agents

There were 5231 applications received from lawyers or agents on the behalf of an individual. This figure represents 46% of all applications received and is an increase of 38% when compared to 3796 applications received in 2005–06.

Local Government only received 1% of these applications while 80% were received by State Government health agencies.

This marked increase could be attributed to FOI being used to access documents in addition to or in place of discovery of documents, ie the process used in court proceedings. This is a trend that has been recognised generally and, as an applicant's reasons for accessing documents is irrelevant to the FOI process, it would be inappropriate to restrict access if it was assumed the applicant intended to use the documents for the purposes of litigation³.

To reduce the burden on FOI, agencies could consider other administrative processes to make the documents available outside of FOI with or without charge.

Broadcast Applications

Over the past few years there has been a noticeable increase in the number of applications made by Members of Parliament and the media that are broadcast to a number of State Government agencies.

These applications are categorised by having the same wording and being made at the same time to multiple agencies by the one applicant. In many cases these applications are ambiguous and lack a date range for the documents or information being sought, and predominately concern government documents that are common across many agencies. From time to time, at requests from FOI Officers, meetings are arranged to discuss the scope and meaning of these applications and to seek general advice in the interpretation of the FOI Act. Additionally, clarification is often required from the applicant particularly in regard to defining the scope of the application and, where appropriate, this can be coordinated without the need for agencies to individually contact the applicant.

These meetings provide support to FOI Officers and assist in a more efficient approach to processing these applications.

³ Moira Paterson, *Freedom of Information and Privacy in Australia*. LexisNexis Butterworths. Aus. 2005

Amendment of Records Relating to Personal Affairs

The FOI Act provides all members of the public with a mechanism to apply for 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 would include why the applicant believes the record should be amended and may also include any information that the applicant believes will make the record complete.

This year, State and Local Government agencies received a total of 156 applications for amendment of records concerning personal affairs. This represents a decrease of one amendment application compared to the last reporting year.

Of the amendment applications received, all were received by State Government agencies.

Table 7 shows that 73 of the 156 (47% of cases) amendment applications received by State Government agencies were refused. This represents an increase from the 35% of amendment applications refused by State Government in the previous reporting year.

Table 7 – Amendment of Personal Information – State Government

<i>Outcome of Amendment application</i>	<i>2006–07</i>	<i>2005–06</i>
Amendment agreed	35	40
Amendment refused	73	55
Partial amendment	14	3
Notation added	4	6

Table 8 shows that the reason given for refusing to amend records in 61 of the 73 cases was due to records not being incomplete, incorrect, out-of-date or misleading.

Table 8 – Reasons for refusal to amend records – State Government

<i>Reasons for refusal to amend records</i>	<i>2006–07</i>
Records are not incomplete, incorrect, out-of-date or misleading	61
Application contains matter that is incorrect or misleading	2
Procedures for amending records are prescribed by or under the provisions of another legislative instrument	10

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 made by an agency to seek an internal review of that determination.

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

There were 147 applications for internal review received this reporting year, with State Government agencies receiving 134, Local Government receiving 13 and Universities receiving none.

This represents a 3% decrease in internal review applications compared to the previous year.

Of the 147 internal reviews undertaken by agencies this reporting year:

- 70 (59%) confirmed the original determination, which is 3% more than the previous year;
- 42 (35%) varied the original determination, which is 27% more than the previous year;
- Five (4%) reversed the original determination, which is 32% less than the previous year; and
- Two (2%) were withdrawn, which is 2% more than the previous year.

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

Chart 9 – Results of all finalised internal review applications – All Sectors

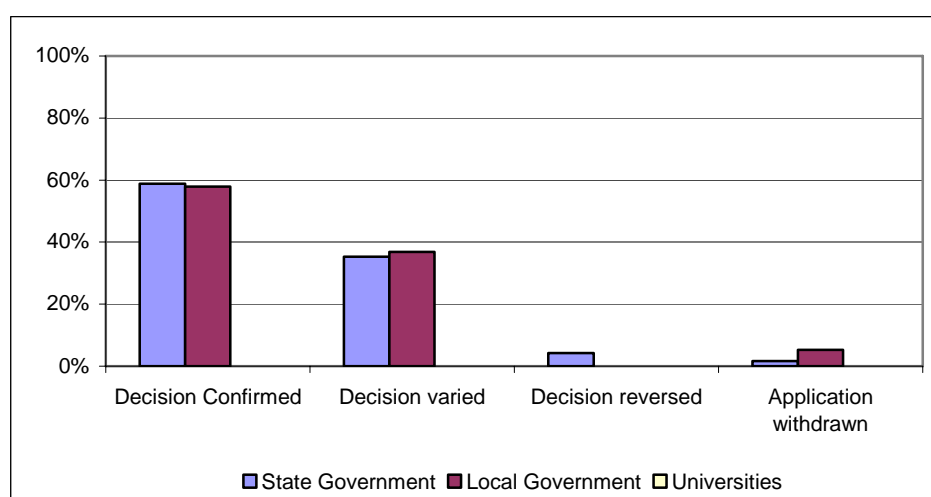


Chart 9 shows that in most cases the determination made on an internal review application confirmed the original decision made by the agency, which is consistent with the previous reporting year.

External Review

An applicant who is aggrieved by an internal review decision, or where the original determination could not be internally reviewed, may make an application for external review to the Ombudsman or Police Complaints Authority. The Ombudsman conducts all external reviews, unless South Australia Police or the Minister responsible for South Australia Police made the determination, in which case the external review would be conducted by the Police Complaints Authority.

For the 2006–07 reporting year, the Ombudsman’s Office advised that it received 231 FOI related enquiries, 55 of which were reviews, 11 were investigations, and 175 were for advice to members of the public and officers of agencies.

Of the 55 reviews:

- Ten determinations were confirmed
- 15 applications were withdrawn
- Seven determinations were substituted (varied and/or reversed)
- Ten applications were dismissed
- Five matters were settled during the external review
- One determination was part substituted/confirmed/revised by the agency
- Three determinations were part substituted/confirmed
- Three determinations were revised by the agency
- One determination was part confirmed/revised by the agency

Of the 11 FOI investigations that were conducted under the *Ombudsman Act 1972*:

- Four resulted in a reasonable resolution of the complaint
- Three complaints could not be sustained
- The remaining four investigations could not be progressed because, following the investigation, it was concluded that the Ombudsman had no jurisdiction to proceed

From the complaints and investigations the Ombudsman’s office found that those agencies subject to the review and investigation were failing to comply with time limits for processing applications and were not issuing notices of determination as required under section 23. The deficiencies in notices of determination were most evident when an agency claimed that a document within the scope of an application was exempt from release, either in part or in full.

Furthermore, the Ombudsman’s office questioned whether these agencies were conducting sufficient searches for documents within the scope of the application as agencies located additional documents during the external review or investigation in many cases. This was at times the result of the agency interpreting the terms of the application too narrowly.

The Police Complaints Authority advised that it received 21 requests for review of which 20 were finalised by the close of the reporting year. Three of the requests for review were successful in whole or in part and the determination was either varied or reversed. One was returned to the South Australia Police to pursue reconciliation with the applicant and 16 of the requests were unsuccessful with the original determination being confirmed.

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

In the event an applicant is aggrieved by the outcome of an external review the applicant may appeal to the District Court. In 2006–07, agencies reported having received three notifications that appeals were being made to the District Court. In the same period, agencies reported that five appeals made to the District Court were completed, which is the same as the previous reporting year.

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

APPENDICES

Appendix A – Objectives, Scope and Interpretations

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

3(1) (a) to promote openness in government and accountability of Ministers of the Crown and other government agencies and thereby to enhance respect for the law and further the good government of the State; and

(b) to facilitate more effective participation by members of the public in the processes involved in the making and the administration of laws and policies.

Scope

The FOI Act 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 is currently defined as:

- a) a Minister of the Crown; or*
- b) a person who holds an office established by an Act; or*
- (b) an administrative unit under the Public Sector Management Act 1995; or*
- (c) South Australia Police; or*
- (d) a council; or*
- (e) 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 of 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*
- (f) a person or body declared by the regulations to be an agency,*

but does not include an exempt agency.

Exempt agencies are listed in Schedule 2 of the FOI Act, and in the *Freedom of Information (Exempt Agencies) Regulations 2003*. A list of exempt agencies is attached in Appendix E.

Accredited FOI Officer

The FOI Act requires that an Accredited FOI Officer must deal with an 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 - Tables

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

<i>Reason for refusing or restricting access</i>	<i>2006–07</i>	<i>2005–06</i>	<i>2004–05</i>
Application incomplete / wrongly directed	10	32	20
Unreasonable diversion of an agency's resources	24	25	18
Abuse of right of access	19	6	13
Fees not paid	25	34	31
Deemed refusal (over 30 days to respond)	110	29	9
Exempt document	1512	1274	1296
Otherwise available	75	192	132
Documents created prior to 1 January 1987	3	2	1
Exempt agency	14	32	25
Document does not exist / lost	279	240	360
<i>Total</i>	<i>2071</i>	<i>1866</i>	<i>1905</i>

Table 10 – Reasons given for the restriction or refusal of access to documents – Local Government

<i>Reason for refusing or restricting access</i>	<i>2006–07</i>	<i>2005–06</i>	<i>2004–05</i>
Application incomplete / wrongly directed	1	0	2
Unreasonable diversion of an agency's resources	2	2	4
Abuse of right of access	0	0	0
Fees not paid	0	1	4
Deemed refusal (over 30 days to respond)	0	0	0
Exempt document	74	47	55
Otherwise available	9	7	10
Documents created prior to 1 January 1987	2	0	0
Exempt agency	0	0	0
Document does not exist / lost	21	16	10
<i>Total</i>	<i>109</i>	<i>73</i>	<i>85</i>

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

<i>Reason for refusing or restricting access</i>	<i>2006–07</i>	<i>2005–06</i>	<i>2004–05</i>
Application incomplete / wrongly directed	0	0	0
Unreasonable diversion of an agency's resources	1	0	0
Abuse of right of access	0	0	0
Fees not paid	0	0	0
Deemed refusal (over 30 days to respond)	0	0	0
Exempt document	3	3	1
Otherwise available	0	0	0
Documents created prior to 1 January 1987	0	0	0
Exempt agency	0	0	0
Document does not exist / lost	1	1	0
<i>Total</i>	<i>5</i>	<i>4</i>	<i>1</i>

Table 12 – Completed Applications - State Government

<i>Outcome of Application</i>	<i>2006-07</i>	<i>2005-06</i>
Granted In Full	7 754	6 520
Granted in Part	1 333	1 033
Refused	821	728
<i>Total Completed applications</i>	<i>9 908</i>	<i>8 282</i>
<i>Plus</i>		
Transferred in full	116	167
Withdrawn	102	80
<i>Total Actually Processed</i>	<i>10 126</i>	<i>8 529</i>

Table 13 – Completed Applications - Local Government

<i>Outcome of Application</i>	<i>2006-07</i>	<i>2005-06</i>
Granted In Full	137	128
Granted in Part	69	49
Refused	49	25
<i>Total completed applications</i>	<i>255</i>	<i>202</i>
<i>Plus</i>		
Transferred in full	1	2
Withdrawn	9	18
<i>Total Actually Processed</i>	<i>265</i>	<i>222</i>

Table 14 – Completed Applications – Universities

<i>Outcome of Application</i>	<i>2006–07</i>	<i>2005–06</i>
Granted In Full	8	2
Granted in Part	3	3
Refused	2	1
<i>Total completed applications</i>	<i>13</i>	<i>6</i>
<i>Plus</i>		
Transferred in full	0	0
Withdrawn	3	0
<i>Total Actually Processed</i>	<i>16</i>	<i>6</i>

Table 15 – State Government Agencies Access Applications Received

Agency	Number of Access Applications
Aboriginal Housing Authority	1
Adelaide & Mt Lofty Ranges Natural Resource Management Board	0
Adelaide Cemeteries Authority	0
Adelaide Festival Centre Trust	1
Adelaide Festival Corporation	0
Attorney-General's Department	85
Balaklava & Riverton Districts Health Service Inc	0
Barossa & Light Regional Development Board Inc	0
Bordertown Memorial Hospital Inc.	6
Carclew Youth Arts Centre Inc	0
Ceduna District Health Service Inc	52
Centennial Park Cemetery Authority	1
Central Northern Adelaide Health Service - Primary Health Care Services (North/North East)	9
Central Northern Adelaide Health Service, Glenside Mental Health Service	106
Children, Youth and Women's Health Service	366
Chiropractors' Board of South Australia	0
CNAHS - Lyell McEwin Hospital	859
CNAHS - Regional Office	5
Cooper Pedy Hospital & Health Services Inc	11
Country Health SA - Port Lincoln	0
Country Health SA (Murray Bridge Office)	0
Courts Administration Authority	69

<i>Agency</i>	<i>Number of Access Applications</i>
Cummins & District Memorial Hospital	3
Department for Administrative & Information Services	27
Department for Correctional Services	128
Department for Environment & Heritage	19
Department for Families and Communities	301
Department for Transport, Energy & Infrastructure	123
Department for Primary Industries & Resources SA	69
Department of Education and Children's Services	102
Department of Further Education, Employment, Science & Technology	12
Department of Health	60
Department of the Premier and Cabinet	160
Department of Trade & Economic Development	23
Department of Treasury and Finance	45
Department of Water, Land & Biodiversity Conservation	21
Domiciliary Care SA	5
Drug and Alcohol Services South Australia	43
Eastern Eyre Health & Aged Care - Kimba Campus	0
Environment Protection Authority	28
Equal Opportunity Commission	1
Eudunda & Kapunda Health Service Inc	0
Eyre Peninsula Natural Resources Management Board	0
Flinders Medical Centre	717
Forestry SA	0
Gawler Health Service	72

<i>Agency</i>	<i>Number of Access Applications</i>
Guardianship Board	2
Hawker Memorial Hospital Inc	0
History Trust of South Australia	0
HomeStart Finance	0
Housing SA	53
Independent Gambling Authority	0
Inner Southern Community Health Service	0
Kangaroo Island Health Service	10
Karoonda Hospital - Mallee Health Service	0
Kingston Soldiers' Memorial Hospital Inc	2
Lameroo District Health Service	1
Land Management Corporation	2
Legal Services Commission	14
Leigh Creek Health Service Inc	0
Lower North Health	16
Loxton Hospital Complex Inc	0
Medical Board of South Australia	11
Meningie & Districts Memorial Hospital & Health Service	1
Mid North Health - Booleroo Health Service	1
Mid North Health - Peterborough Hospital	18
Mid-West Health	10
Millicent & District Hospital & Health Service Inc	15
Modbury Public Hospital	400
Mount Barker & Districts Health Service	22

<i>Agency</i>	<i>Number of Access Applications</i>
Mount Gambier & Districts Health Service	124
Multicultural SA	0
Murray Bridge Soldiers Memorial Hospital	18
Murray Mallee Community Health Service	0
Naracoorte Health Service	20
Noarlunga Health Services	174
Northern Adelaide Hills Health Service	5
Northern Yorke Peninsula Health Service	11
Nurses Board of South Australia	6
Occupational Therapists Registration Board of SA	0
Office of Public Employment	1
Office of the Attorney-General	17
Office of the Minister - Hon Carmel Zollo	10
Office of the Minister - Hon Gail Gago	17
Office of the Minister - Hon John Hill	24
Office of the Minister - Hon Jane Lomax-Smith	21
Office of the Minister - Hon Jay Weatherill	22
Office of the Minister - Hon Jennifer Rankine	1
Office of the Minister - Hon Kevin Foley	31
Office of the Minister - Hon Michael Wright	17
Office of the Minister - Hon Patrick Conlon	24
Office of the Minister - Hon Paul Caica	1
Office of the Public Advocate	2
Office of Venture Capital Board	5

<i>Agency</i>	<i>Number of Access Applications</i>
Orroroo & District Health Service	1
Outback Areas Community Development Trust	0
Penola War Memorial Hospital Inc	5
Pinnaroo Soldiers' Memorial Hospital	0
Podiatry (Chiropody) Board of South Australia	0
Port Augusta Hospital & Regional Health Services	33
Port Broughton District Hospital & Health Services	2
Port Lincoln Health Services Inc	3
Port Pirie Regional Health Service	37
Pregnancy Advisory Centre	21
Queen Elizabeth Hospital	656
Quorn Health Services	0
Renmark Paringa District Hospital Inc	15
Repatriation General Hospital	71
Riverland Regional Health Service Inc	81
Royal Adelaide Hospital	3407
SA Ambulance Service	157
SA Dental Service	42
SA Fire and Emergency Services Commission	8
SA Lotteries	0
SA Water	23
SAICORP	0
South Australia Police Service	1469
South Australian Community Housing Authority	3

<i>Agency</i>	<i>Number of Access Applications</i>
South Australian Country Fire Service	5
South Australian Film Corporation	1
South Australian Museum	0
South Australian Psychological Board	0
South Australian Tourism Commission	3
South Coast District Hospital Inc	24
South East Regional Health Service Inc	0
Southern Flinders Health	4
St Margaret's Rehabilitation Hospital	2
State Electoral Office	8
State Library of South Australia	1
State Theatre Company of SA	0
Strathalbyn & District Health Service	14
Super SA	0
Tailem Bend District Hospital	11
The Dog & Cat Management Board	1
The Mannum District Hospital	3
The Physiotherapists Board of South Australia	0
TransAdelaide	17
Tumby Bay Hospital & Health Services	5
Veterinary Surgeons Board of SA	0
Waikerie Health Services Inc.	0
Wakefield Health	0
West Beach Trust	0

<i>Agency</i>	<i>Number of Access Applications</i>
Whyalla Hospital and Health Services Inc.	60
WorkCover Corporation	200
<i>Total</i>	<i>11 052</i>

Table 16 – Local Government Access Applications Received

Agency	Number of Access Applications
Adelaide City Council	29
Adelaide Hills Council	1
Alexandrina Council	7
Campbelltown City Council	5
City of Burnside	10
City of Charles Sturt	35
City of Holdfast Bay	10
City of Marion	9
City of Mitcham	19
City of Mount Gambier	0
City of Norwood, Payneham & St Peters	4
City of Onkaparinga	13
City of Playford	13
City of Port Adelaide Enfield	23
City of Port Lincoln	0
City of Prospect	0
City of Salisbury	13
City of Tea Tree Gully	17
City of Unley	46
City of Victor Harbor	2
City of West Torrens	7
Clare & Gilbert Valleys Council	2
Coorong District Council	0

<i>Agency</i>	<i>Number of Access Applications</i>
Corporation of the Town of Walkerville	15
District Council of Barunga West	0
District Council of Ceduna	0
District Council of Cleve	0
District Council of Coober Pedy	0
District Council of Franklin Harbour	0
District Council of Grant	2
District Council of Karoonda East Murray	0
District Council of Kimba	0
District Council of Le Hunte	0
District Council of Lower Eyre Peninsula	0
District Council of Loxton Waikerie	0
District Council of Mallala	4
District Council of Mount Barker	1
District Council of Ororoo Carrieton	0
District Council of Peterborough	0
District Council of Robe	0
District Council of Tatiara	0
District Council of Tumby Bay	0
District Council of Yankalilla	0
District Council of Yorke Peninsula	1
Flinders Ranges Council	0
Kangaroo Island Council	0
Kingston District Council	1

<i>Agency</i>	<i>Number of Access Applications</i>
Mid Murray Council	6
Naracoorte Lucindale Council	0
Northern Areas Council	0
Port Augusta City Council	4
Port Pirie Regional Council	0
Regional Council of Goyder	1
Renmark Paringa Council	1
Roxby Downs Council	0
Southern Mallee District Council	0
The Barossa Council	3
The Berri Barmera Council	0
The District Council of Streaky Bay	0
Town of Gawler	4
Wattle Range Council	4
Whyalla City Council	1
<i>Total</i>	<i>313</i>

Table 17 – Universities Access Applications Received

<i>Agency</i>	<i>Number of Access Applications</i>
Flinders University of South Australia	0
University of Adelaide	1
University of South Australia	15
<i>Total</i>	<i>16</i>

Appendix C – Reasons for Refusing or Restricting Access

Application incomplete or wrongly directed

Under Section 15 of the FOI Act, an agency can not 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).

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 made after the time period is still considered a valid determination under the Act.

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 of the Act.

Otherwise available

Section 20(1) 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, 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 unless:

- a document contains information concerning the personal affairs of the applicant, or
- it is a document that is reasonably necessary to enable some other document (being a document to which the agency has given access under the 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. Refer to Appendix E.

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.

Appendix D – FOI Act Schedule 1 Exempt Documents

Clause 1 - Cabinet documents

Documents that have been specifically prepared for submission to Cabinet or documents, that contain information concerning the deliberations of Cabinet.

Clause (2a) allows for documents prepared for submission to Cabinet to be released under FOI, where a Minister has certified that Cabinet have approved the document as a document to which access may be given under FOI.

Clause 2 - Executive Council documents

Documents that have been specifically prepared for submission to the Executive Council or documents, containing information concerning the deliberations of Executive Council.

Clause 2 sub-section (3) allows for Executive Council documents as described above, to be released under FOI where a Minister has certified that Executive Council have approved the document as a document to which access may be given under FOI.

Clause 3 – Exempt documents communicated by another government

Documents containing information communicated to agencies by the Commonwealth or another State Government, 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

Documents, which contain matter, the disclosure of which could reasonably be expected to:

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

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

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

Clause 6 - Documents affecting personal affairs

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 1985* but not recorded on the electoral roll) also fall under this category.

Clause 7 - Documents affecting business affairs

Documents containing trade secrets of any agency or any other person. Also, documents that consist of information with a commercial value to any agency or any other person, or information that, if disclosed, could be expected to have an adverse effect on business, professional, commercial or financial affairs.

A document is not exempt by virtue of this clause if it is a contract entered into by the Crown or an agency.

Clause 8 - Documents affecting the conduct of research

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

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

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

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

Clause 12 - Documents the subject of secrecy provisions

Documents that contain information, which if disclosed, would constitute an offence against an Act.

Clause 13 - Documents containing confidential material

Documents which, if disclosed, would found an action for breach of confidence. This also refers to information that 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.

A contract entered into by the Crown or an agency is not exempt by virtue of clause 13 unless a confidentiality clause or term is included in the contract that has been approved by a Minister, or a Minister's delegate, or in the case of Local Government and Universities, the agency itself.

Clause 14 - Documents affecting the economy of the State

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

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

Documents that, 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 that, if disclosed, could prejudice the competitiveness of an agency engaged in competitive activities.

Clause 17 - Documents subject to contempt, et cetera

Documents that, if disclosed, would constitute contempt of court or infringe the privilege of Parliament.

Clause 18 - Documents arising out of companies and securities legislation

A document containing matter that appears in a document prepared or received by an agency from the Commonwealth or another State for the purposes of the Ministerial Council for Corporations. It also refers to documents that, if disclosed, would reveal the deliberations or decisions of the Ministerial Council for Corporations (other than a document by which a decision of the Council has been officially published). Documents provided by or held by the Australian Securities and Investments 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

Documents that are held in a public library or archival collection and have a condition imposed which prohibits their disclosure to members of the public. This only refers to private documents placed in a library or archives (not official records as defined under the *State Records Act 1997*).

Appendix E – Exempt Agencies – State Government

The following is a list of exempt agencies that 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*;
- g) the Essential Services Commission in relation to –
 - (i) information gained under Part 5 of the Independent Industry Regulator Act 1999 that would, if it were gained under Part 5 of the *Essential Service Commission Act 2002*, be capable of being classified by the Commission as being confidential under section 30(1) of that Act; and
 - (ii) information gained under Part 5 of the *Essential Service Commission Act 2002* that if classified by the Commission as being confidential under section 30(1) of that Act;
- 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 agencies exempt by the *Freedom of Information (Exempt Agency) Regulations 1993*

- (a) the Senior Secondary Assessment Board of South Australia established under the *Senior Secondary Assessment Board of South Australia Act*;
- (b) each electricity corporation within the meaning of the *Electricity Corporations Act 1994*;
- (ba) the South Australian Independent Industry Regulator established under the *Independent Industry Regulator Act 1999*;
- (c) each State-owned company within the meaning of the *Electricity Corporations (Restructuring and Disposal) Act 1999* that holds a licence under the *Electricity Act 1996*;
- (d) The commission of inquiry established under the *Commission of Inquiry (Children in State Care) Act 2004*; and
- (e) Each agency established by or under the *Health and Community Services Complaints Act 2004*.