

# ANNUAL REPORT

YEAR ENDED  
JUNE  
2012

**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*.

**MINUTE**



**Government  
of South Australia**

MINUTES forming ENCLOSURE to

MPS12D00549

Office of the  
Minister for Finance  
Minister for the Public Sector

**TO: THE PREMIER**

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**RE: ANNUAL REPORT FOR TABLING – FOI ACT 1991**

Please find attached three copies of the 2011-2012 *Freedom of Information Act 1991* Annual Report, and an electronic copy for tabling in both Houses of Parliament.

A handwritten signature in blue ink, appearing to read 'Michael O'Brien'.

**Hon Michael O'Brien MP**  
**MINISTER FOR THE PUBLIC SECTOR**

Date: 08/11/12



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## **1 Minister's Foreword**

This is the twenty first FOI Annual Report to be tabled in Parliament since the commencement of the *Freedom of Information Act 1991* (FOI Act) in January 1992. Since this date, 174 080 FOI applications have been made across all sectors, this includes State Government, Local Government and South Australian Universities.

This year agencies received 12 328 applications for access to information held across the three sectors subject to the FOI Act. This number is slightly less than the previous financial year.

During 2011-12, 11 595 applications were determined, with 85% granting access either in full or in part.

Although there was no increase in application numbers, the total cost to government for the administration of the FOI Act increased in 2011-12 to an estimated \$10.4 million, which is a 22% increase on the previous year. This, in part, reflects the increasingly broad and complex nature of FOI applications received by some agencies.

I would like to thank State Records for its support in relation to the administration of the FOI Act, and to express my appreciation for the commitment and effort made by staff in agencies subject to the FOI Act towards the management of the FOI process. The FOI process often involves making complicated decisions in relation to applications that are often broad in scope and complex in nature.

The Hon Michael O'Brien MP  
**MINISTER FOR THE PUBLIC SECTOR**

## 2 Freedom of Information in South Australia

### 2.1 What is the Freedom of Information Act?

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

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

The FOI Act and its subordinate regulations can be accessed via the South Australian legislation website at [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### 2.2 Administration of the FOI Act

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

This support includes:

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

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

### 2.3 Reporting

Pursuant to Section 54AA of the FOI Act, all FOI reporting requirements were gazetted on 15 June 2006. These requirements remained unchanged in 2011-12.

State Records derives annual FOI statistics from the Freedom of Information Management System (FOIMS) to enable this Annual Report to be produced. FOIMS is a secure web-based system for the recording and processing of FOI applications by agencies. It also assists agencies manage their FOI related reporting obligations.

### 2.4 Agencies subject to the FOI Act

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

Schedule 2 to the FOI Act and the *Freedom of Information (Exempt Agency) Regulations 2008* (FOI Exempt Agency Regulations) prescribe those agencies that are exempt from the FOI Act. Schedule 2 is one of two schedules that form part of the FOI Act.

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

### 3 The Year in Review

#### 3.1 Committal of the FOI Act

Commencing on 21 October 2011, in accordance with the *Administrative Arrangements (Committal of Acts) Proclamation 2011*, the FOI Act was committed to the Minister for the Public Sector. On the same day the Honourable Michael O'Brien MP was appointed as the Minister for the Public Sector.

#### 3.2 Amendments to the FOI Act

##### 3.2.1 Freedom of Information (Fees and Charges) Variation Regulations 2012

Each year the *Freedom of Information (Fees and Charges) Regulations 2003* are varied to adjust the fees and charges associated with making and processing FOI applications by an agreed indexation factor.

During 2011-12 the fee for making an FOI application was set at \$29.50 and processing charges at \$11.00 for each 15 minutes spent by the agency dealing with the application.

The *Freedom of Information (Fees and Charges) Variation Regulations 2012* was published in the South Australian Government Gazette on 31 May 2012 and commenced operation on 1 July 2012.

From 1 July 2012 the fee for making an FOI application was set at \$30.50 and processing charges at \$11.40 for each 15 minutes spent by the agency in dealing with the application.

#### 3.3 Advice, publications & training

##### 3.3.1 Advice

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

During 2011-12, State Records responded to 1286 FOI related enquiries from members of the public and agencies.

##### ***Enquiries by source***

	<b>Agencies</b>	<b>Public</b>	<b>Combined</b>
FOI			
Telephone calls	522	307	829
Emails	157	14	171
FOIMS			
Telephone calls	158	4	162
Emails	124	0	124
<b>Total</b>	<b>961</b>	<b>325</b>	<b>1 286</b>



### 3.3.2 Publications

#### *Freedom of Information Release of Cabinet Documents under the Ten Year Rule*

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

The Ten Year Rule provides that a Cabinet document can be considered for release, through the FOI process, if ten years have passed since the end of the calendar year in which it came into existence. When dealing with an application for a Cabinet document under this policy, agencies must give regard to the provisions of the FOI Act, including other exemption clauses in Schedule 1 to the FOI Act. The Department of the Premier and Cabinet (DPC) is designated as the agency to deal with all FOI applications under the Ten Year Rule.

During 2011-12, 175 applications for Cabinet documents were made to DPC under the Ten Year Rule. Of these, 142 were made by the Media, 23 by a researcher, 5 by Members of Parliament and 5 from members of the public. Of the applications received during 2011-12 determinations were issued for 72 applications. Four submissions were released in full and 48 submissions were released in part.

#### *Other publications*

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

During 2011-12, two guidelines and three information sheets were reviewed and updated to improve the quality of the general advice provided to agencies and to reflect any regulatory changes.

All FOI related guidelines and information sheets can be found on the State Records website at [www.archives.sa.gov.au/foi/foiadmin/index.html](http://www.archives.sa.gov.au/foi/foiadmin/index.html).

### 3.3.3 FOI courses delivered during 2011-12

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

State Records delivered 21 FOI training sessions during 2011-12. These sessions were attended by 348 participants. In addition, State Records delivered three agency specific FOI awareness sessions and delivered three tailored FOI presentations.

#### ***FOI courses delivered during 2011-12***

<b>Course Name</b>	<b>No. of Courses</b>	<b>No. of Attendees</b>
Introduction to FOI Management System (FOIMS)	2	19
Training for Accredited and Non Accredited FOI Officers	18	318
Module 1 & 2 – FOI Officers Processing FOI Applications	6	109
Module 3 - Assessing FOI Exemption Clauses	6	105
Module 4 - Making and Drafting FOI Determinations	6	104
FOI Awareness	1	11
FOI Awareness - Agency specific	3	39
Other Tailored FOI Presentations	3	54
<b>Total</b>	<b>27</b>	<b>441</b>

### 3.3.4 On-line FOI awareness education

State Records continued to maintain its on-line option for people to learn about Freedom of Information via the ERNI learning portal. The FOI Induction module was completed by 129 participants.

### 3.4 Statistical data in this report

State Records wrote to agencies on 6 June 2012 to formally advise them of their obligation to report under the FOI Act and to request that they ensure that statistical information relating to their agency was up to date in FOIMS no later than 31 July 2012.

A copy of the database was taken on 2 August 2012 and statistical reports were run against this copy during the week commencing 27 August 2012.

### 3.5 Data inconsistency in FOIMS

In previous years it has been reported that the analysis of data entered in FOIMS has shown that some agencies have recorded information incorrectly. In addition, some agencies were using FOIMS to manage non-FOI related requests for access to information. These kinds of entries in FOIMS are not easily identifiable and create inaccuracies in reporting.

### 3.6 Additional reporting responsibilities

#### 3.6.1 Contracts with approved confidentiality clauses

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

For the 2011-12 reporting year, agencies reported executing 139 contracts that contained an approved confidentiality clause. Of the 139 contracts executed in 2011-12:

- State Government reported 61
- Local Government reported 45
- Universities reported 33.

In addition to the above, 70 contracts containing approved confidentiality clauses were recorded in FOIMS that were executed in previous years. The dates of execution of these contracts ranged between 2005 and June 2011. Of these 70 contracts:

- State Government recorded 67
- Local Government recorded 1
- Universities recorded 2.

#### 3.6.2 Documents provided outside of the FOI Act

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

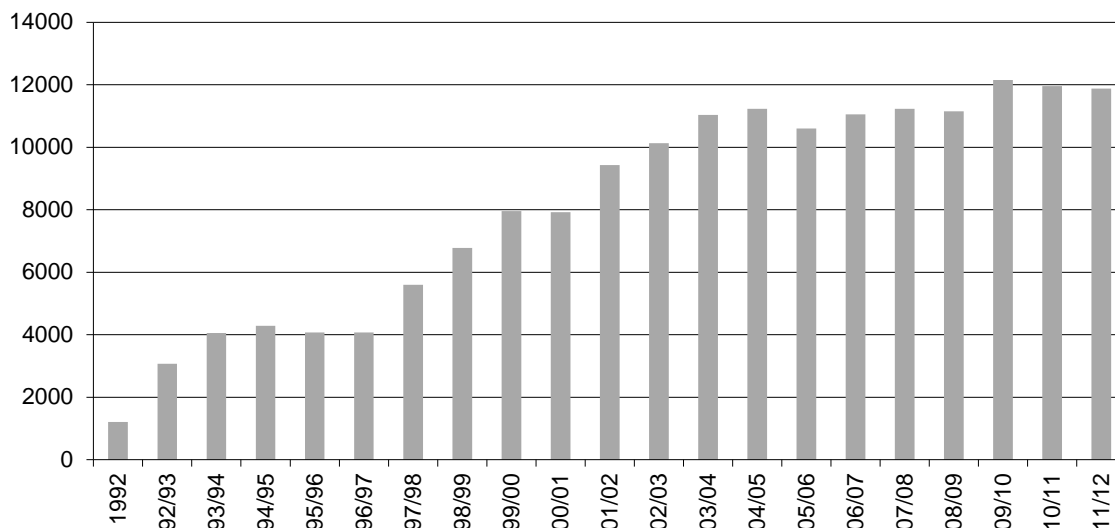
During the reporting year there were 124 reported instances where agencies refused an FOI application because information was provided outside of FOI. This is a 35% decrease to the number reported in 2010-11.

## 4 Statistical Summary – All Years to Date

### 4.1 State Government

Since the commencement of the FOI Act on 1 January 1992, there has been 170 838 applications for access made to State Government agencies. The chart below shows the growth in applications made to State Government over the past 20 years.

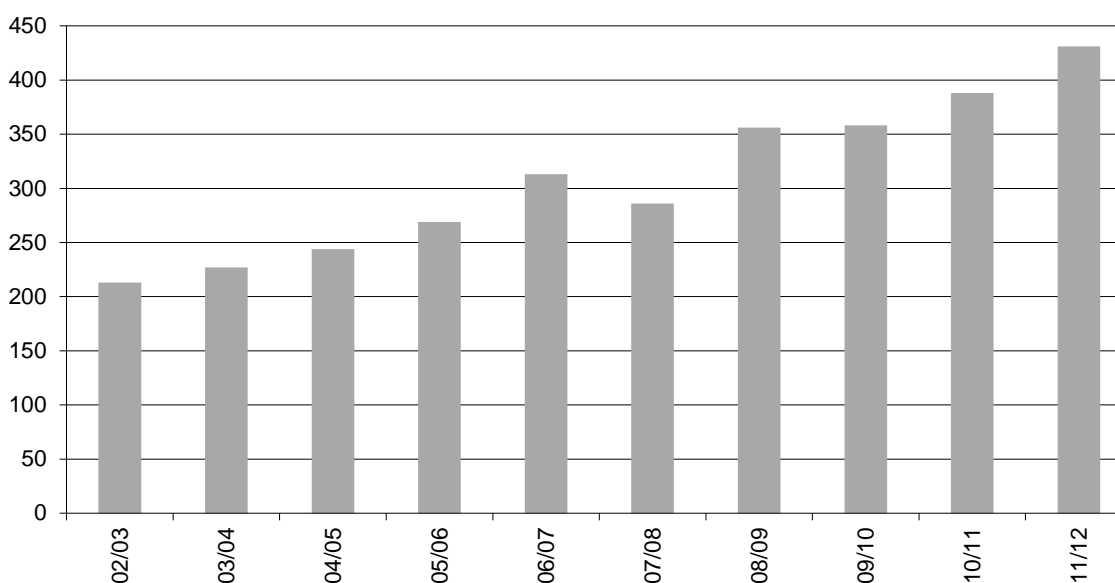
#### **Applications made to State Government since 1 January 1992**



### 4.2 Local Government

Local Government has been subject to the FOI Act since 1 July 2002. Since this date, there have been 3085 applications for access made to Local Government.

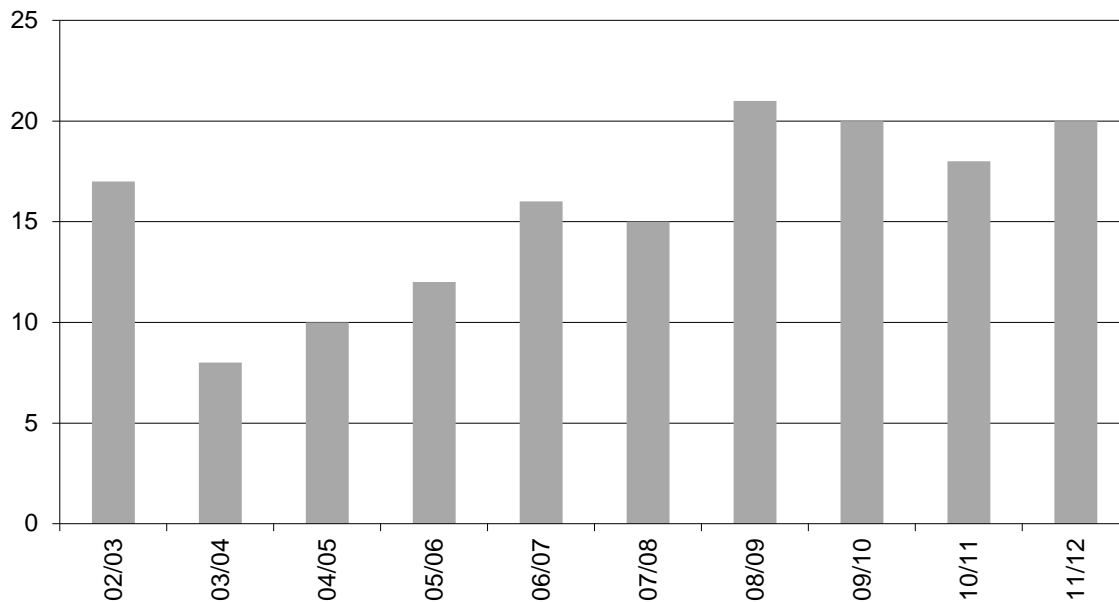
#### **Applications made to Local Government since 1 July 2002**



### 4.3 Universities

The *Freedom of Information (General) Regulations 2002* prescribes the Flinders University of South Australia, the University of Adelaide and the University of South Australia to be included as agencies under the definition of agency in the FOI Act. These Regulations commenced on 11 July 2002. Since that time, there have been a total of 157 applications for access made to Universities.

#### **Applications made to Universities since 1 July 2002**



## 5 Statistical Summary – 2011-12

### 5.1 Applications processed during 2011-12

This year 12 328 FOI applications for access were received by all agencies subject to the FOI Act.

At the end of 2010-11 there were 2001 unfinished applications for access that were carried over into the new reporting year. Therefore, during 2011-12 there was a total of 14 329 applications to be processed.

#### *Applications received and carried over*

Application	State Govt	Local Govt	Universities	All Sectors
New	11 877	431	20	12 328
Carried Over	1 952	46	3	2 001
<b>Total</b>	<b>13 829</b>	<b>477</b>	<b>23</b>	<b>14 329</b>

### 5.2 Category of access applications

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

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

Personal applications include requests for access:

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

Non personal applications include requests for access:

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

### **Applications processed by sector & application category**

<b>Sector</b>	<b>Personal Affairs</b>		<b>Non-Personal Affairs</b>	
	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>
<b>New applications 2011-12</b>				
State Government	7 181	60%	4 696	40%
Local Government	64	15%	367	85%
Universities	5	25%	15	75%
<b>Total</b>	<b>7 250</b>	<b>59%</b>	<b>5 078</b>	<b>41%</b>
<b>Applications from 2010-11</b>				
State Government	813	42%	1 139	58%
Local Government	17	37%	29	63%
Universities	0	0%	3	100%
<b>Total</b>	<b>830</b>		<b>1 171</b>	
<b>Total to be processed 2011-12</b>	<b>8 080</b>	<b>56%</b>	<b>6 249</b>	<b>44%</b>

### 5.3 Types of applicants

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

Applications can only have one type of applicant assigned. The types of applicants are as follows:

- Member of Parliament
- Media
- Lawyer / Agent
- Public
- Other.

Of the 12 328 applications made during 2011-12, 38% were received from Lawyers or Agents, 31% from the Public and 21% received from Members of Parliament. These proportions are consistent with those reported for 2010-11.

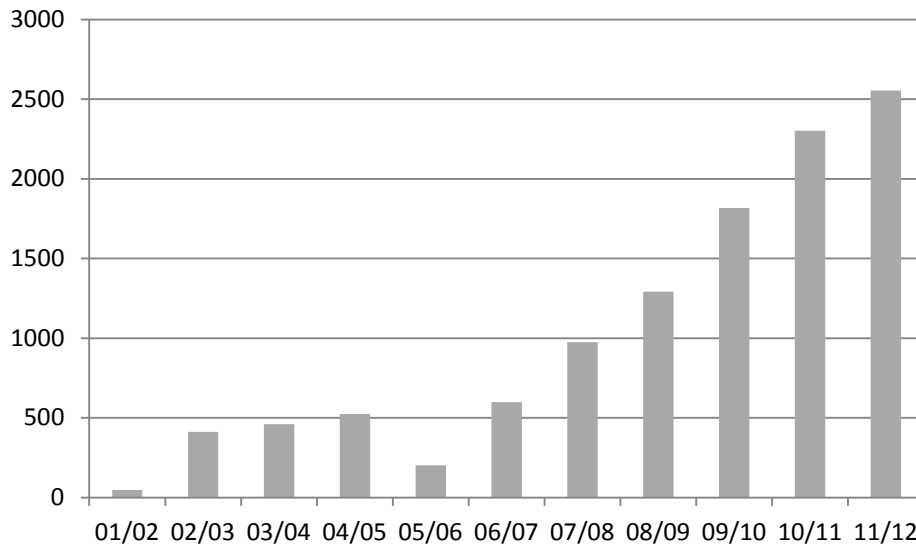
### **Applications received during 2011-12 by applicant type**

<b>Applicant type</b>	<b>State Govt</b>	<b>Local Govt</b>	<b>Unis</b>	<b>All sectors</b>
Member of Parliament	2 492	57	5	2 554
Media	243	2	0	245
Lawyer / Agent	4 564	61	0	4 625
Public	3 521	256	11	3 788
Other	1 057	55	4	1 116
<b>Total</b>	<b>11 877</b>	<b>431</b>	<b>20</b>	<b>12 328</b>

### 5.3.1 Applications made by Members of Parliament

This year agencies received 2554 FOI applications from Members of Parliament. This is 11% more than were received the previous year. As the following chart shows, there has been a consistent upward trend in FOI applications received from Members of Parliament over the last six years.

#### **Applications made by Members of Parliament since 2001-02**



### 5.4 Across government applications

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

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

The kinds of documents sought during the year were in relation to ministerial travel, organisational charts, procurement practices, capital works programs, details and costs associated with entertainment, staff redeployment and mental health leave.

These kinds of applications are usually made by Members of Parliament and the media. There were 12 across government applications received in 2011-12 which equates to more than 150 separate applications received by state government agencies.

From time to time, at the request of agencies, meetings are arranged to discuss the scope and meaning of these applications and to seek general advice on the interpretation of the FOI Act as it relates to the applications. These meetings provide support to agencies and assist in developing a more efficient approach to processing the applications.

## 5.5 Response time & extensions

### 5.5.1 Response times

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

Overall 7156, or 58%, of all applications were processed within 30 days. A further 5238 took longer than 30 days to process which is a 26% increase from 2010-11.

#### *Response times by sector*

Time	State Govt	Local Govt	Unis	All Sectors
0-15 days	4 209	140	6	4 355
16-30 days	2 586	206	9	2 801
>30 days	5 161	74	3	5 238
<b>Total</b>	<b>11 956</b>	<b>420</b>	<b>18</b>	<b>12 394</b>

### 5.5.2 Extensions

In some cases agencies are unable to deal with applications within the 30 day timeframe. In recognition of the fact that applications can be both broad and complex in nature the legislation allows agencies to extend the timeframe to deal with an application under section 14A.

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

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

#### *Formal extensions*

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

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

During the reporting year 191 applications were formally extended under section 14A.

#### *Formal extension reasons*

Extension reason	State Govt	Local Govt	Uni	All Sectors
Section 14(1)(a) - searching	123	11	1	135
Section 14(1)(b) - consultation	41	14	1	56
<b>Total</b>	<b>164</b>	<b>25</b>	<b>2</b>	<b>191</b>



## *Negotiated extensions*

Some agencies negotiate extensions with the applicant. Negotiated extensions are not prescribed in the legislation but rather are a pragmatic approach taken by agencies for applications that cannot be dealt with within the legislated timeframe.

Anecdotally it seems that agencies choose to negotiate an extension in cases where formally extending an application is no longer possible. This may be because the regulatory timeframe for extending an application has passed, or will pass before the determination on the extension is made, or in instances where the criteria for a formal extension cannot be met. During the reporting year 65 applications were extended informally via a negotiated extension.

### ***Negotiated extensions by sector***

<b>Extension reason</b>	<b>State Govt</b>	<b>Local Govt</b>	<b>Unis</b>	<b>All Sectors</b>
Negotiated	62	2	1	65

## 5.6 Outcomes of access applications

### 5.6.1 Determined and processed

During the reporting year there were a total of 14 329 applications to be processed across all sectors.

Applications can be processed in one of three ways. They can be determined, withdrawn by the applicant or transferred to another agency. In total, 12 054 applications were finalised by agencies. Of this number, 11 595 were determined and 459 were either transferred or withdrawn. When an application for access is determined agencies are able to fully release a document, partially release a document or refuse access to a document.

### ***Outcomes of application by sector***

<b>Sector</b>	<b>Application Category</b>	<b>Full Release</b>	<b>Partial Release</b>	<b>Refused</b>
<b>State Govt</b>	Personal	4 575	1 711	804
	Non Personal	2 521	727	822
	<b>Total</b>	<b>7 096</b>	<b>2 438</b>	<b>1 626</b>
<b>Local Govt</b>	Personal	27	19	15
	Non Personal	205	101	51
	<b>Total</b>	<b>232</b>	<b>120</b>	<b>66</b>
<b>Universities</b>	Personal	2	0	2
	Non Personal	11	0	2
	<b>Total</b>	<b>13</b>	<b>0</b>	<b>4</b>
<b>All Sectors</b>	Personal	4 604	1 730	821
	Non Personal	2 737	828	875
	<b>Total</b>	<b>7 341</b>	<b>2 558</b>	<b>1 696</b>

The average rate of release of documents under FOI is 85% across all sectors, with the greater proportion 63% of documents being released in full and 22% being partially released. These release rates represent a slight decrease on the previous two years where the average release rate was 87%.

## 5.6.2 Reasons for refusal or restriction

The FOI Act allows an agency to refuse access to either the whole or part of a document. An agency can refuse access because it has determined that the document is exempt in accordance with Schedule 1 to the FOI Act – ‘Exempt documents’. The other reasons for refusal include fees not being paid, no such document exists or the document is otherwise available.

### **Reasons for refusing access by sector**

<b>Details</b>	<b>State</b>	<b>Local</b>	<b>Unis</b>	<b>Total</b>
Section 15 - Application incomplete/wrongly directed	39	0	0	39
Section 18(1) - Unreasonable diversion of an agency's resources	45	3	0	48
Section 18(2a) - Abuse of right of access	4	0	0	4
Section 18(3) - Fees not paid	58	6	0	64
Section 19(2) - Deemed refusal - over 30 days to respond	269	3	0	272
Section 20(1) - Exempt document	2 627	103	2	2 732
Section 20(1)(b)(c)(d) – Documents otherwise available	101	23	0	124

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

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

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

<b>Details</b>	<b>State</b>	<b>Local</b>	<b>Unis</b>	<b>Total</b>
Exempt agency	34	1	0	35
Document does not exist/lost	605	36	2	643

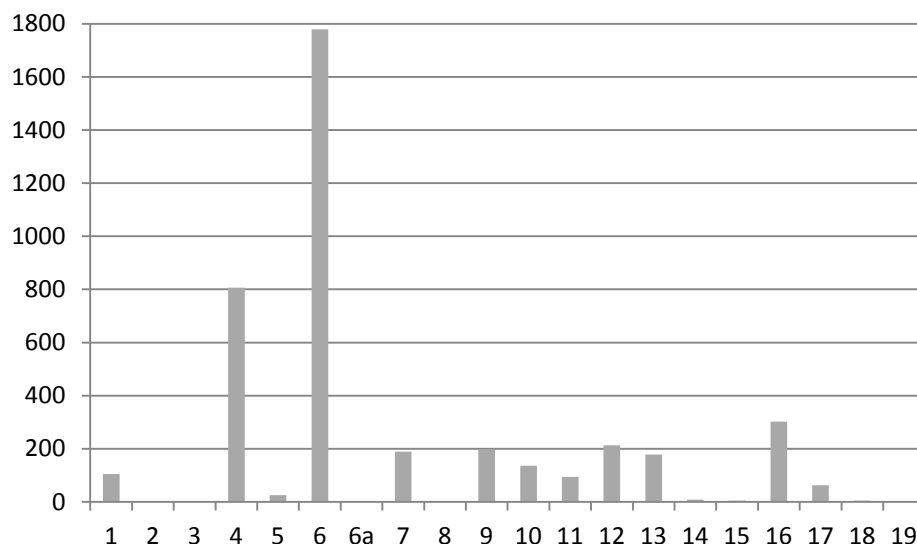
### *Exemptions*

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

This year exemption clauses were applied 4114 times. In some circumstances, a determination may use more than one exemption clause to refuse access. This usually results in the number of exemptions applied being greater than the number of determinations made. The number of exemptions applied to documents has only increased 3% from the previous reporting year.

A complete list of the exemption clauses is found in Schedule 1 to the FOI Act. The FOI Act is available at [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

## Exemptions applied across all sectors



As is clearly demonstrated by the above chart, the two most commonly applied exemption clauses are:

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

The use of these two exemption clauses accounts for 63% of all clauses applied, with 43% being in relation to clause 6.

### 5.7 The cost of FOI

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

#### 5.7.1 Overall cost

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

- State Records for the support and management of FOIMS
- State Ombudsman for the cost of legal officers dealing with FOI reviews
- Police Complaints Authority for conducting FOI reviews of SA Police determinations
- advising work undertaken by the Crown Solicitor's Office.

It is estimated that the cost of administering the FOI Act in South Australia was \$10.4 million for 2011-12. This is a 22% increase to the figure reported for the previous year. Along with the actual increase in costs, improved accuracy and comprehensiveness of agency reporting has contributed to the increase in reported costs over recent years.

Many agencies reported an increase in the number of staff involved in FOI with the associated salary costs increasing by almost \$1 million.

## 5.7.2 Staffing

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

Agency returns show a total of 913 staff across all sectors are involved in processing FOI applications. This is an increase of 18% compared to the previous year. Of the 913 staff involved in processing FOI applications across all sectors, 304 have been designated as accredited FOI officers.

Many of these staff spend only a portion of their time undertaking FOI related activities. The 913 staff equates to 116.7 Full Time Equivalents (FTE) involved in processing FOI applications. Of these:

- 101.3 FTE were from State Government
- 15 FTE were from Local Government
- 0.4 FTE was from Universities.

State Government has recorded an 11% increase in their FOI staffing levels whereas Local Government and Universities have remained very close to the levels reported in 2010-11.

There are two likely reasons for reported increase in the number of staff involved in administering the FOI Act. These are:

- an increase in the number of staff involved in assessing and determining FOI applications in order to deal with the volume of applications being received
- agencies are better at assessing, and therefore reporting, the number of staff and the proportion of time dedicated to FOI activities.

## 5.7.3 Fees assessed and fees collected

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

In order to determine the cost of FOI, agencies are required to report both the regulated fees and charges that could be levied for processing FOI applications and the actual amount recovered.

### *Fees assessed*

Agencies reported in FOIMS a total of \$501 668 as the amount that applicants could have been charged, in terms of processing fees, the provision of transcripts, photocopying and other charges in the 2011-12 reporting year. Processing fees are the fees that can be charged by agencies in accordance with the Fees and Charges Regulations for each 15 minutes spent processing the application.

### ***Fees assessed by sector in 2011-12***

<b>Sector</b>	<b>2011-12</b>	<b>2010-11</b>	<b>% change</b>
State Government	\$493 649	\$477 555	3%
Local Government	\$ 8 019	\$ 10 969	-27%
Universities	\$ 0	\$ 0	-
<b>Total</b>	<b>\$501 668</b>	<b>\$488 524</b>	<b>3%</b>

Local Government has recorded a decrease in the fees assessed even though there has been an increase in the number of FOI applications received across this sector.

#### *Fees collected*

In 2011-12 agencies reported recovering \$232 316 of their total assessed cost. Of this amount 69% or \$159 736 was collected as application fees.

#### **Fees collected by sector in 2011-12**

<b>Sector</b>	<b>2011-12</b>	<b>2010-11</b>	<b>% change</b>
State Government	\$227 145	\$205 545	11%
Local Government	\$ 5 141	\$ 16 451	-69%
Universities	\$ 30	\$ 0	-
<b>Total</b>	<b>\$232 316</b>	<b>\$221 996</b>	<b>5%</b>

Local Government collected less fees than in the previous year. However, given that the number of fees assessed was also less than 2010-11, a decrease in collection is expected.

#### 5.7.4 Fee waiver

The fee waiver information captured in FOIMS relies on agencies recording any fees and charges that would be associated with a particular application even though the applicant qualifies for a fee waiver. It has been found that this is not undertaken on a regular or consistent basis and many agencies do not record information relating to fees and charges if they are not planning to charge the applicant.

As a result, the statistics reported below in relation to fee waivers should not be considered as an accurate representation of fees that could have been charged to applicants if they had not qualified for a fee waiver.

#### **Applications where fees were waived**

<b>Reason for Fee Waiver</b>	<b>State</b>	<b>Local</b>	<b>Unis</b>	<b>Total</b>
Member of Parliament	919	26	4	949
Financial Disadvantage	1 597	50	0	1 647
Other	814	10	0	824
<b>Total Waived</b>	<b>3 330</b>	<b>86</b>	<b>4</b>	<b>3 420</b>
Fee Reduction	7	1	0	8
<b>Total – Waived &amp; Reduced</b>	<b>3 337</b>	<b>87</b>	<b>4</b>	<b>3 428</b>

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

Agencies waived or reduced application fees for 3428 applications. In cases of application fee waiver, there is often an associated reduction or waiver of the processing costs of the application. The total amount of fees and charges waived by agencies was \$352 226, with 38% being waived due to financial disadvantage. This is shown in more detail in the table below.

#### **Fee waiver – financial disadvantage**

<b>Fee</b>	<b>State</b>	<b>Local</b>	<b>Unis</b>	<b>All Sectors</b>
Application Fees	\$ 47 111	\$1 475	\$122	\$ 48 708
Processing Fees	\$ 80 168	\$ 440	\$ 0	\$ 80 608
Transcript Fees	\$ 0	\$ 0	\$ 0	\$ 0
Photocopying	\$ 5 497	\$ 23	\$ 0	\$ 5 520
<b>Total</b>	<b>\$132 776</b>	<b>\$1 938</b>	<b>\$122</b>	<b>\$134 836</b>

## 5.8 Amendment applications

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

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

This year there were 281 FOI applications for amendment received by agencies, which is an increase of 45% over the previous year. As was the case in 2010-11, all were received by State Government agencies. In addition, there were 26 unfinished amendment applications brought forward from the previous year. Therefore, in total there were 307 FOI applications for amendment to be processed by State Government agencies during 2011-12.

Determinations were issued for 272 applications with two applications either transferred to another agency or withdrawn by the applicant.

### ***Amendment of personal information***

<b>Outcome</b>	<b>2011-12</b>	<b>2010-11</b>
Amendment agreed	82	51
Amendment refused	169	107
Partial amendment	15	15
Notation added	6	5
<b>Total</b>	<b>272</b>	<b>178</b>

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

### ***Reasons for refusal to amend records***

<b>Reason</b>	<b>2011-12</b>	<b>2010-11</b>
Records are not incomplete, incorrect, out-of-date or misleading	168	103
Application contains matter that is incorrect or misleading	0	1
Procedures for amending records are prescribed by or under the provisions of another legislative instrument	1	3
<b>Total</b>	<b>169</b>	<b>107</b>

## 5.9 Review & appeal

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

### 5.9.1 Internal review

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

Upon an internal review, the principal officer may confirm, vary or reverse the determination under review.

This year there were 222 internal review applications received by all three sectors. This is 21% less than received the previous year. In addition there were 71 unfinished applications for internal review brought forward from 2010-11, all of which were brought forward by State Government agencies.

Therefore, during 2011-12 there were 314 applications for internal review to be processed. Determinations were issued for 243 applications with the decision reversed in 13% of cases.

#### **Outcome of internal review applications**

<b>Outcome</b>	<b>2011-12</b>
Decision confirmed	156
Decision varied	55
Decision reversed	32

#### **5.9.2 External review**

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

The State Ombudsman conducts all external reviews, except for determinations made by the South Australia Police or the Minister responsible for South Australia Police, in which case the Police Complaints Authority conducts the external review.

During 2011-12, the State Ombudsman advised there were 111 external reviews received. The State Ombudsman also advised that there was a decrease in the number of external review applications by Members of Parliament.

The Police Complaints Authority advised they conducted 30 external reviews during 2011-12 with 24 being finalised.

The State 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.

#### **5.9.3 Appeal to the District Court**

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

During 2011-12, agencies reported eight appeals had been before the District Court during the year and all were finalised. In two of these cases the District Court confirmed the decision of the agency. A further two cases had the decision varied with one having the agency's decision reversed. The remaining three appeals were withdrawn.

#### **5.10 Access applications carried over to 2012-13**

Not all applications are processed by the end of the reporting year and are therefore carried over to be processed in the following year. In 2011-12 there were 2361 unfinished applications carried over into 2012-13, an increase of 15%. Of all unfinished applications, 28% were still within the 30 day timeframe.

#### **Applications carried over to 2012-13**

<b>Sector</b>	<b>Within 30 day timeframe</b>	<b>Outside 30 day timeframe</b>	<b>Total Unfinished</b>
State Government	641	1 664	2 305
Local Government	16	34	50
Universities	3	3	6
<b>Total</b>	<b>660</b>	<b>1 701</b>	<b>2 361</b>

### 5.10.1 Overdue applications carried over to 2012-13

Of the 2361 unfinished applications, 1701 or 72% were outside the 30 day timeframe as of the close of the reporting year. Where an application takes longer than 30 days to process, it is common practice for agencies to inform the applicant of the progress of their application.

Of the 1701 overdue applications, 73% or 1250 were non-personal. Those applications that are broad in scope and complex in nature tend to fall into the non-personal category. This combination of scope and complexity can result in agencies taking more time to undertake the tasks of document assessment, consultation and decision making.

#### ***Overdue applications carried over to 2012-13***

<b>Sector</b>	<b>Personal</b>	<b>Non Personal</b>	<b>Total</b>
State Government	434	1 230	1 664
Local Government	16	18	34
Universities	1	2	3
<b>Total</b>	<b>451</b>	<b>1 250</b>	<b>1 701</b>



## 6 APPENDICES

## 6.1 Appendix A – Agency tables

### *Access applications received – State Government*

Agency	Applications Received 2011-12	Applications Received 2010-11
Adelaide & Mt Lofty Ranges Natural Resources Management Board	2	1
Adelaide Cemeteries Authority	1	1
Adelaide Convention Centre	2	1
Adelaide Entertainments Corporation	0	0
Adelaide Festival Centre Trust	1	0
Adelaide Festival Corporation	0	0
Alinytjara Wilurara Natural Resources Management Board	0	0
Architectural Practice Board of SA	0	1
Attorney-General's Department	120	187
Carclew Youth Arts Inc	0	0
Centennial Park Cemetery Authority	0	0
Central Adelaide Local Health Network (CALHN) <sup>1</sup>	2 716	3 044
Country Health South Australia Local Health Network (CHSALHN) <sup>2</sup>	318	585
Courts Administration Authority	51	56
Defence SA	6	19
Department for Correctional Services	272	288
Department for Communities and Social Inclusion <sup>3</sup>	214	463
Department of Education and Child Development	534	212
Department of Environment & Natural Resources	79	79
Department of Further Education, Employment, Science and Technology	46	38
Department for Health and Ageing	148	173
Department of Manufacturing, Innovation, Trade, Resources and Energy <sup>4</sup>	87	66
Department of Planning, Transport and Infrastructure <sup>5</sup>	260	238
Department for Primary Industries and Regions SA	70	55
Department of the Premier and Cabinet	497	335
Department of Treasury and Finance	314	314
Department for Water	34	48
Electoral Commission of South Australia	0	0
Environment Protection Authority	37	39
Equal Opportunity Commission	3	3
Essential Services Commission	0	1
Eyre Peninsula Natural Resources Management Board	0	0
Forestry SA	8	1
Guardianship Board	2	0
Health Performance Council	0	0
History Trust of South Australia	0	0
HomeStart Finance	1	0

Agency	Applications Received 2011-12	Applications Received 2010-11
Independent Gambling Authority	13	0
Industrial Relations Commission	0	0
Industrial Relations Court	0	0
Legal Practitioners Conduct Board	0	2
Legal Services Commission	14	4
Medical Panel SA	1	2
Motor Accident Commission	3	5
Non-government Schools Registration Board	0	1
Northern Adelaide Local Health Network (NALHN) <sup>6</sup>	1 229	1 419
Northern & Yorke Natural Resources Management Board	1	0
Office for the Ageing	0	0
Office of the Attorney-General	50	36
Office of the Employee Ombudsman	1	0
Office of the Guardian for Children and Young People	0	0
Office of the Minister – Hon Chlöe Fox	14	-
Office of the Minister - Hon Gail Gago	21	19
Office of the Minister - Hon Grace Portolesi	47	10
Office of the Minister - Hon Ian Hunter	9	-
Office of the Minister - Hon Jack Snelling	74	15
Office of the Minister - Hon Jennifer Rankine	31	21
Office of the Minister - Hon John Hill	23	61
Office of the Minister - Hon Michael O'Brien	24	17
Office of the Minister - Hon Patrick Conlon	25	30
Office of the Minister - Hon Paul Caica	56	25
Office of the Minister - Hon Russell Wortley	21	0
Office of the Minister - Hon Tom Kenyon	12	0
Office of the Minister - Hon Tom Koutsantonis	25	24
Office of the Premier - Hon Jay Weatherill	68	34
Office of the Public Advocate	4	5
Office for Public Employment and Review (formerly the Office for Ethical Standards and Professional Integrity)	1	1
Office of the Training Advocate	0	0
Outback Communities Authority	0	0
Rail Commissioner	83	16
Regional Development Australia Barossa	0	0
Residential Tenancies Tribunal	5	0
SA Ambulance Service	198	191
SA Arid Lands Natural Resources Management Board	1	0
SA Fire and Emergency Services Commission	18	18
SA Lotteries	20	1
SA Murray Darling Basin Natural Resources Management Board	2	0
SA Water	66	57
South Australia Police Service	2 095	1 937
South Australian Country Fire Service	17	17

Agency	Applications Received 2011-12	Applications Received 2010-11
South Australian Film Corporation	8	4
South Australian Museum	0	0
South Australian Tourism Commission	41	13
South East Natural Resources Management Board	1	0
Southern Adelaide Local Health Network (SALHN) <sup>7</sup>	1 055	1 014
State Library of South Australia	1	0
State Theatre Company of SA	0	0
Stormwater Management Authority	3	4
Super SA	2	0
Teachers Registration Board of SA	1	1
The Dog & Cat Management Board	0	0
Urban Renewal Authority (formerly Land Management Corporation)	11	14
Veterinary Surgeons Board of SA	0	1
West Beach Trust (marketed as Adelaide Shores)	0	0
Women's and Children's Health Network	395	366
WorkCover Corporation	271	237
Workcover Ombudsman	1	0
Workers Compensation Tribunal	0	0
Zero Waste SA	0	1

<sup>1</sup> **Central Adelaide Local Health Network** - includes BreastScreen SA, CALHN Office of the CEO, Donate Life, Pregnancy Advisory Centre, Mental Health Service – Glenside Campus, Queen Elizabeth Hospital, Royal Adelaide Hospital, SA Dental Service, SA Prison Health Service and St Margaret's Rehabilitation Hospital.

<sup>2</sup> **Country Health SA Local Health Network** – the list of hospitals and other health services covered by this local health network was published in the 2010-11 FOI Annual Report.

<sup>3</sup> The significant decrease in applications to the Department for Communities and Social Inclusion and the corresponding increase to Department for Education and Child Development is primarily due to Families SA and Adoptions and Families Information Services moving from one department to the other.

<sup>4</sup> The Department of Trade and Economic Development is the source of previous year's application figures.

<sup>5</sup> Previous year's figures derived from applications to the Department for Transport, Energy and Infrastructure plus the Department of Planning and Local Government.

<sup>6</sup> **Northern Adelaide Local Health Network** – includes Lyell McEwin Hospital, Modbury Public Hospital and the NALHN Office of the CEO.

<sup>7</sup> **Southern Adelaide Local Health Network** – includes Drug and Alcohol Services SA, Flinders Medical Centre, Noarlunga Health Service, Repatriation General Hospital and the SALHN Office of the CEO.

**Access applications received – Local Government**

<b>Agency</b>	<b>Applications Received 2011-12</b>	<b>Applications Received 2010-11</b>
Adelaide City Council	40	50
Adelaide Hills Council	11	7
Alexandrina Council	4	3
Campbelltown City Council	15	15
City of Burnside	6	8
City of Charles Sturt	44	29
City of Holdfast Bay	6	6
City of Marion	11	11
City of Mitcham	15	22
City of Mount Gambier	0	0
City of Norwood, Payneham & St Peters	4	0
City of Onkaparinga	26	11
City of Playford	11	23
City of Port Adelaide Enfield	30	19
City of Port Lincoln	0	1
City of Prospect	0	8
City of Salisbury	13	20
City of Tea Tree Gully	5	11
City of Unley	80	73
City of Victor Harbor	5	5
City of West Torrens	16	13
Clare & Gilbert Valleys Council	1	0
Coorong District Council	0	0
Corporation of the Town of Walkerville	2	0
District Council of Barunga West	0	0
District Council of Ceduna	0	0
District Council of Cleve	0	0
District Council of Coober Pedy	1	6
District Council of Elliston	0	0
District Council of Franklin Harbour	1	0
District Council of Grant	2	3
District Council of Karoonda East Murray	0	0
District Council of Kimba	0	0
District Council of Lower Eyre Peninsula	0	0
District Council of Loxton Waikerie	0	0
District Council of Mallala	1	0
District Council of Mount Barker	4	4
District Council of Orroroo Carrieton	0	0
District Council of Peterborough	0	0
District Council of Robe	1	0
District Council of Streaky Bay	0	3
District Council of Tatiara	0	0
District Council of The Copper Coast	20	7
District Council of Tumby Bay	2	0

<b>Agency</b>	<b>Applications Received 2011-12</b>	<b>Applications Received 2010-11</b>
District Council of Wudinna	0	0
District Council of Yankalilla	0	1
District Council of Yorke Peninsula	2	1
Eastern Health Authority Inc.	0	1
Flinders Ranges Council	0	0
Kangaroo Island Council	3	4
Kingston District Council	1	0
Light Regional Council	3	1
Mid Murray Council	10	3
Naracoorte Lucindale Council	0	0
Northern Areas Council	0	0
Port Augusta City Council	9	4
Port Pirie Regional Council	2	0
Regional Council of Goyder	3	3
Renmark Paringa Council	2	1
Roxby Downs Council	0	0
Rural City of Murray Bridge	3	0
Southern Mallee District Council	0	0
The Barossa Council	3	5
The Berri Barmera Council	1	0
Town of Gawler	5	3
Wattle Range Council	2	1
Whyalla City Council	5	2

***Access applications received – Universities***

<b>Agency</b>	<b>Applications Received 2011-12</b>	<b>Applications Received 2010-11</b>
Flinders University	5	3
University of Adelaide	13	12
University of South Australia	2	3

## 6.2 Appendix B – Reasons for refusing access

### Application incomplete or wrongly directed

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

### Unreasonable diversion of an agency's resources

Section 18(1) allows an agency to refuse to deal with an application if it appears that the nature of the application, if carried out, would substantially and unreasonably divert the agency's resources. However, before refusing to deal with it, the agency must first endeavour to assist the applicant to amend the application (so that it would no longer divert the agency's resources). See section 18(2).

### Abuse of the right of access

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

### Fees not paid

Under section 18(3), an agency may refuse to deal with an application if it has requested payment of an advance deposit and payment of the deposit has not been made within the period specified in the request.

### Deemed refusal

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

### Exempt document

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

### Otherwise available

Section 20(1)(b), (c) and (d) allows access to be refused to documents that are available for inspection either at the agency which received the application, or at another agency (whether part of a public register or otherwise), or in accordance with another Act. Access can also be refused if the document is usually and currently available for purchase, or was not created by the agency itself and genuinely forms part of library material held by the agency.



### 6.3 Appendix C – Other reasons for not providing access

#### Exempt agency

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

The FOI Act can be accessed via the South Australian legislation website at [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

#### Document does not exist or is lost

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