

ANNUAL REPORT

YEAR ENDED
JUNE
2004

Freedom of Information Act 1991



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

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Minutes forming Enclosure to

SR2004/00965

REFERENCE:

TO: HON MIKE RANN MP, PREMIER

RE: TABLING OF ANNUAL REPORT IN PARLIAMENT – FREEDOM OF INFORMATION

Pursuant to the *Freedom of Information Act 1991*, I enclose three copies of the Freedom of Information 2003/2004 Annual Report for tabling in both Houses of Parliament on 26 October 2004. Thank you for your assistance.



Michael Wright MP
**MINISTER FOR ADMINISTRATIVE SERVICES
MINISTER FOR INDUSTRIAL RELATIONS
MINISTER FOR RECREATION, SPORT & RACING
MINISTER FOR GAMBLING**

25 / 10 / 2004

Enc.

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FOREWORD

This year the Government continued its commitment to open and accountable government and after much debate on the review of the Freedom of Information (FOI) regime in South Australia, the *Freedom of Information (Miscellaneous) Amendment Act 2004* was passed by both houses of Parliament.

I look forward to the implementation of this Act and the contribution it will make to ensuring information concerning the operations of government is available to both members of the public and Members of Parliament. In particular the new legislation will strengthen the powers of the reviewing authorities during the external review process. External reviews have been criticised for being slow and cumbersome. The amendments to the legislation will streamline the process by providing the review authority with the power to confirm, vary or reverse the determination of an agency. The agency is then legally bound to comply with the determination and can only appeal the review authority's decision on a question of law.

The new legislation will also require contracts to be disclosed unless certified by a Minister (or an agency for non-government agencies) that it should be withheld. This requirement complements the South Australian Government's Contract Disclosure Policy and ensures that a contract is not exempted from disclosure merely because it is a contract. The requirement only applies to the confidentiality clause, leaving open the option for the confidential material to be omitted and the remainder of the contract disclosed.

This year 11 208 FOI applications were processed by all agencies bound by the Act. This was 849 more than the previous year or an 8 % increase. It is becoming well recognised that Freedom of Information is a resource intensive process and that the disclosure of information, made available outside the legislation, will reduce this process and openly inform the public about the operations and decision making of government.

This year I had the pleasure of addressing the State Record's Conference *Recording the Evidence of South Australian Government*. In my address I emphasised the need for good records management across government and how important this is to the efficiency of the Freedom of Information process. It is becoming well recognised that the *State Records Act 1997* complements the FOI legislation in that it aims to ensure every agency is held accountable for the adequacy of their records management practices. Agencies need to take up the challenge to commit to the achievement of a more open, honest and accountable government by ensuring that information that is generated or received by government is effectively captured and managed and readily accessible in either a public domain or through the FOI legislation.

I would like to take this opportunity to express my sincere gratitude to the staff members of State Records of South Australia for their ongoing dedication to the improvement of FOI in this State. I am confident that State Records will continue to offer invaluable support to agencies to ensure the effective and smooth implementation of the amendments as they come into force.

I would also like to thank all officers involved in processing FOI applications and those staff who support the FOI process. It is pleasing to see that in spite of an overall increase in FOI applications received this reporting year, 70 % of applications were processed within the 30-day time frame. Excluding extensions granted to the Royal Adelaide Hospital, State Government agencies finalised applications within 30 days in 98 % of cases. It is also pleasing that in over 80 % of cases documents requested were granted in full.

The Hon. Michael Wright MP
MINISTER FOR ADMINISTRATIVE SERVICES
MINISTER FOR INDUSTRIAL RELATIONS
MINISTER FOR RECREATION, SPORT AND RACING
MINISTER FOR GAMBLING

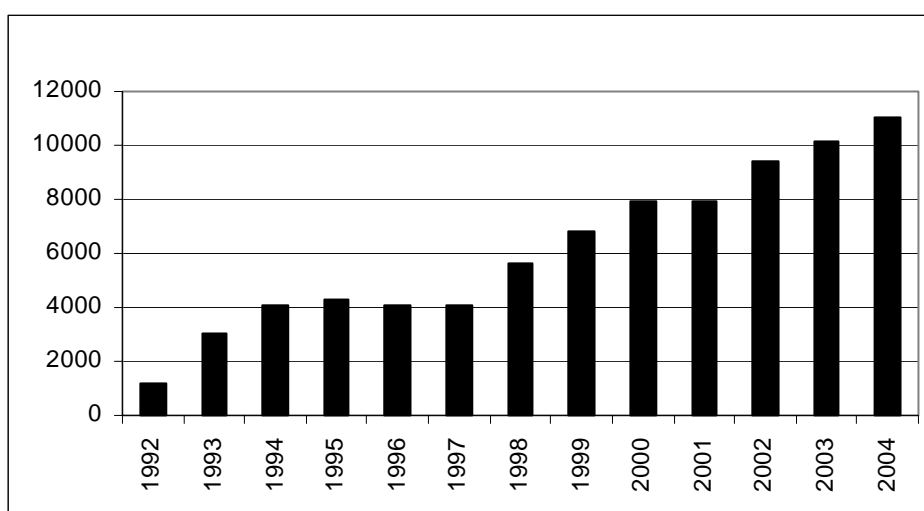
October 2004

IN SUMMARY

State Government over the last 13 years

Since the date of commencement of the Freedom of Information (FOI Act) on 1 January 1992 there have been 79 593 applications made to South Australian State Government agencies. Chart 1 below shows the breakdown of these applications over the last 13 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



Local Government and Universities

This is the second reporting year that Local Government and Universities have provided FOI statistics and processed FOI applications in accordance with the FOI Act.

The statistics in this report suggest that overall Local Government are making available more information to the public than in the previous year. This can be seen by the increase in the number of FOI applications that were restricted or refused due to the documents being otherwise available.

This reporting year Universities appear to be providing full access to documents requested under FOI in most cases.

The Year In Review

Freedom of Information (Miscellaneous) Amendment Act 2004

In August 2002, the Government introduced the *Freedom of Information (Miscellaneous) Amendment Bill 2002* (the Bill) to amend the FOI Act following a review of the Freedom of Information regime in South Australia. After significant debate and amendment by the Legislative Council the Bill was returned to the House of Assembly. As agreement on the Bill was not reached, a conference of both Houses was held on 6 May 2004 to finalise its passage through Parliament. Both Houses of Parliament accepted the recommendations of the conference on that day. The amendments to *Freedom of Information (Fees and Charges) Regulations* will be brought into force on 14 November 2004.

Of the amendments made to the FOI Act the most significant are as follows:

- Allowing greater access to documents of Cabinet and Executive Council;
- Increasing the powers of reviewing authorities during the external review process;
- Removing the ability to issue Agency and Ministerial Certificates that render a document beyond the scope of the FOI Act;
- Requiring that contracts be disclosed unless certified by a Minister (or an agency for non-government agencies) that it should be withheld; and
- Protecting personal information from unreasonable disclosure for as long as necessary instead of 30 years.

Administrative Measures to improve the FOI Regime in South Australia

In addition to legislative amendment, the review of the FOI regime identified a number of administrative measures designed to ensure the Government's commitment to openness and accountability. Implementation of these administrative measures continued through 2003-04, including:

- Citizens' Rights to Information Charter;
- FOI Electronic Discussion Forum;
- FOI Officers Forum;
- FOI Process Guide; and
- FOI Monthly Reporting.

During the reporting year, State Records received funding for the development and implementation of an electronic Across Government Freedom of Information Management System.

The Across Government FOI Management System is a web-based database that will provide an accurate and efficient recording system for all agencies to manage their FOI applications. It will also provide Government with a system to allow accurate and more responsive reporting on the operation of the FOI Act in South Australia. It is envisaged that this system will provide more details about the statistics derived from agencies, which will be able to be incorporated into future FOI Annual Reports.

Work on the database continues. Implementation of the database is expected during the 2004-05 reporting year.

Analysis of Statistics for 2003-04

This reporting year South Australian agencies bound by the FOI Act reported processing a total of 849 more applications than the previous year.

As the following report shows, both State Government and Local Government report receiving more applications in 2003-04 compared to 2002-03. This growth in applications may be a result of an increased focus on FOI following the recent review of the Freedom of Information regime in South Australia.

This increased focus has led to a greater need for State Records to support FOI officers through various forums. The need for Accredited FOI Training and general awareness training has also continued as reported in Appendix B of the report.

With a continued emphasis on training and assistance to FOI officers, the approach to processing FOI applications has become more consistent and overall more efficient. This is reflected in the statistics provided in this report.

Proactive Disclosure

This reporting year, statistics from both State Government and Local Government suggest that agencies are becoming more proactive in the disclosure of particular types of information.

In 107 cases, State Government agencies restricted or refused access to documents that were otherwise available. Documents that are otherwise available include those that are accessible through inspection, purchase or through free access. This represents an increase compared to the previous reporting year when State Government agencies reported only 56 cases where documents were otherwise available.

Local Government agencies reported restricting or refusing access to documents that were otherwise available in 9 cases. This is 5 more than reported in the previous year.

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

STATISTICAL SUMMARY

This year there were 11 693 FOI applications received by all agencies bound by the FOI Act. Determinations were issued for 11 208 of those applications, which represents an 8% increase compared to the last reporting year.

Included in this figure are 443 applications brought forward from the 2003-04 reporting year.

Of these 11 693 applications:

- 11 458 were received by State Government agencies with 10 990 of these applications processed and 10 700 successfully determined.
- 227 were received by the Local Government with 210 of these applications processed and 195 successfully determined.
- 8 were received and processed by the South Australian universities with 6 applications successfully determined.
- 485 applications have been carried over into the 2004-05 reporting year.

State Government Summary

For the 2003-04 reporting year there were 11 458 applications received by State Government agencies. Of these, State Government Agencies processed 10 990 applications as mentioned above. This is an increase of 1 329 applications received (13%) compared to 2002-03.

As depicted in Chart 2, agencies reported a 10% increase in personal affairs applications received, compared to last year. Applications for non-personal information increased by 26% in direct contrast to the 25% decrease reported last year.

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

- 70% of applications processed in 2003-04 were finalised within 30 days
- A significant increase in the number of applications that had time limits extended in accordance with section 14A - from 169 extensions last year to 1 940 extensions this year

The increase in Section 14A extensions is largely due to the Royal Adelaide Hospital, which obtained 1 800 extensions during the reporting year.

This large number of extensions granted is due to the high volume of applications received by the Royal Adelaide Hospital. The Department for Human Services (DHS) received 64 % of all FOI applications made to State Government agencies in 2003-04 as depicted in Table 16 in Appendix C.

Excluding extensions granted to the Royal Adelaide Hospital, State Government agencies finalised applications within 30 days in 98 % of cases.

Chart 2 shows the proportion of applications made for personal information compared to non-personal applications and the outcome of those applications.

Chart 2a - Personal and non-personal applications determined (State Government) – (10 700 determined applications 2003-04)

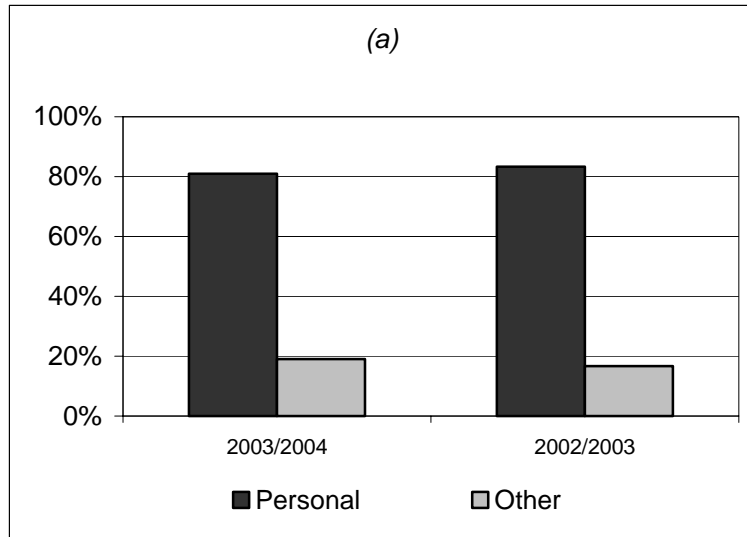
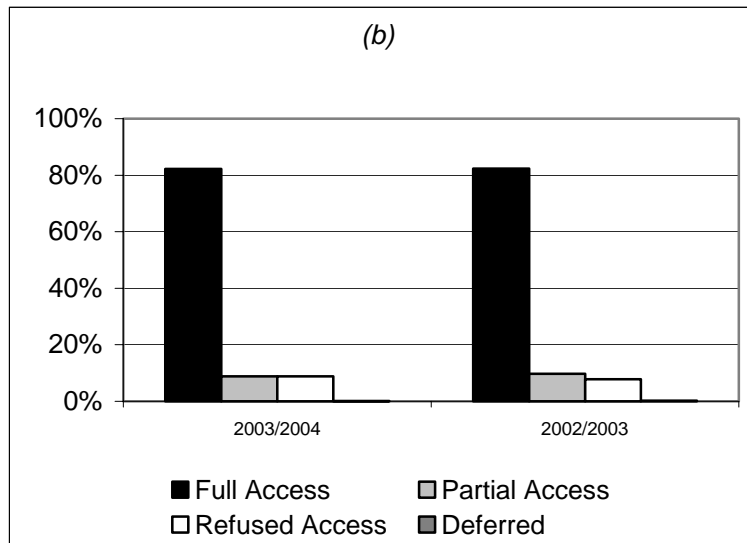


Chart 2b – Outcome of determinations (State Government) – (10 700 determined applications 2003-04)



Note: Due to the chart scale, 11 applications deferred by State Government were too small to be depicted above.

Local Government Summary

This reporting year there were 227 applications received by Local Government, which represents a 7% increase compared to the previous reporting year. 195 of these applications were successfully finalised.

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

- 157 out of 195, or 81% of applications determined in 2003-04, were processed within 30 days
- a 30% decrease in personal affairs applications compared to the previous reporting year
- a 27% increase in non-personal affairs applications compared to the previous reporting year

Chart 3a - Personal and non-personal applications determined (Local Government) – (195 determined applications 2003-04)

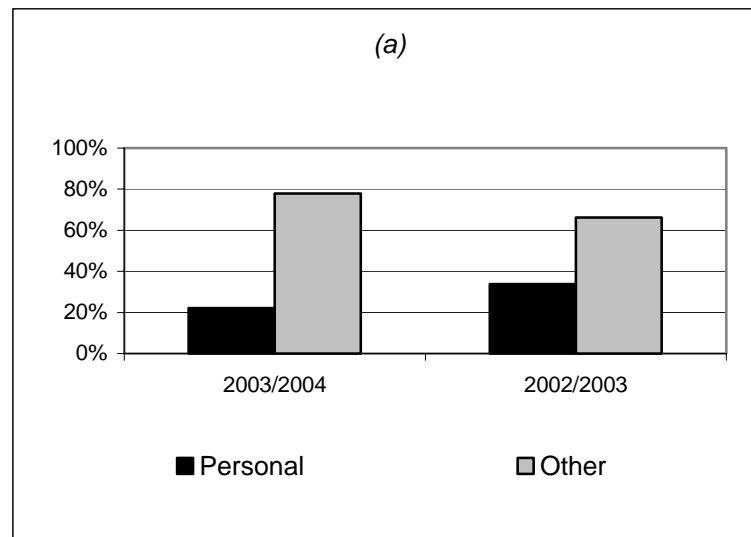
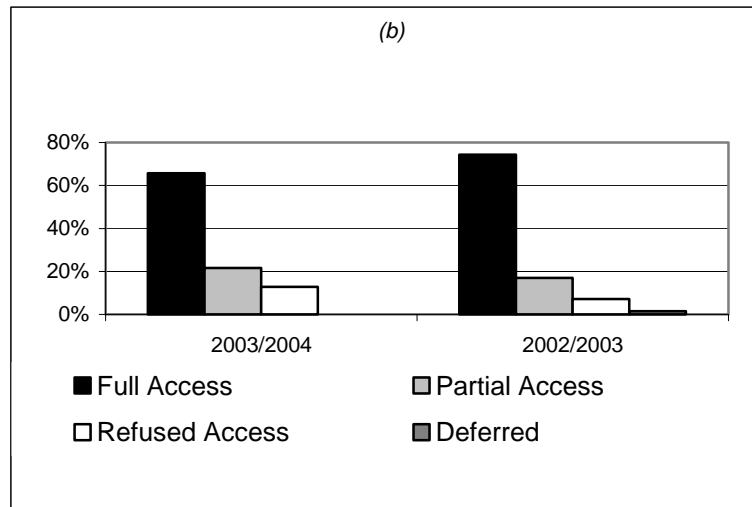


Chart 3b – Outcome of determinations (Local Government) – (195 determined applications 2003-04)



Universities Summary

As a result of amendments to the FOI Act that commenced operation on 1 July 2002, universities were brought within the scope of the FOI Act. This is the second year that South Australian universities have reported FOI statistics.

Eight applications were received in the reporting year for South Australian universities, which represents a 53 % decrease in applications compared to the previous year.

Key data relating to statistics provided by universities includes:

- out of the seven applications with determinations issued, all seven applications were processed within the 30 day time frame
- a 38% decrease in personal affairs applications compared to the last reporting year
- a 67% decrease in non-personal affairs applications compared to the last reporting year

Chart 4a - Personal and non-personal applications determined (Universities) – (6 determined applications 2003-04)

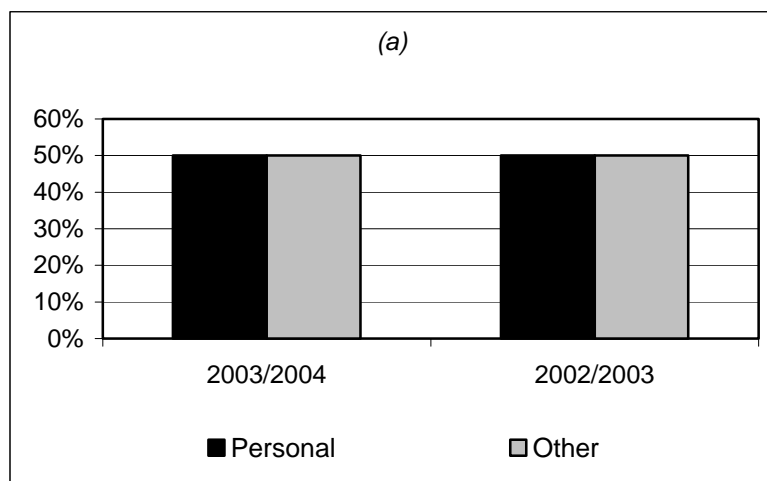
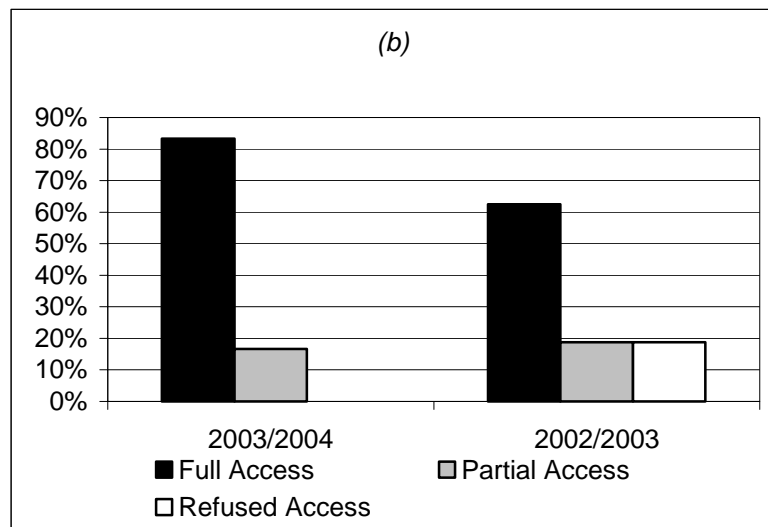


Chart 4b – Outcome of determinations (Universities) – (6 determined applications 2003-04)



ACTIVITY UNDER THE FOI ACT

Introduction

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

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

Requests received

Volume

The combined results of annual statistical returns for all agencies bound by the FOI Act show there were 11 693 FOI applications received during the reporting year, including those brought forward from the previous year.

Since 1999-2000 the top five agencies in terms of volume of applications have been reported. 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. These top six agencies received 69.3% of the total applications to be processed across the three sectors bound by the FOI Act.

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

Agency	2003-04	2002-03	% Change
South Australian Police (SAPOL)	2 737	2 357	16 %
Royal Adelaide Hospital	2 735	2 304	19 %
Queen Elizabeth Hospital	832	789	5 %
Women's and Children's Hospital	424	533	(20 %)
Lyell McEwin Hospital	698	716	(3 %)
Flinders Medical Centre	678	614	10 %

Of the 234 agencies that provided statistics for the 2003-04 annual report, 47 state government (28%) and 33 local government (49%) agencies received no FOI applications for 2003-04.

Type

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

Applications for material relating to personal affairs can include:

- Applicants seeking access to their own personal information.
- Parents seeking access to their child's information.
- Requests from people who are acting on behalf of another for access to personal information, where consent is given without requiring the agency to consult the person concerned. This can include solicitors, personal representatives, insurance agencies and guardians.
- Next of kin seeking access to personal information about a deceased person.
- Applicants applying for their own information as well as other information.

Those applications relating to other material 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 material.

Table 2 – Breakdown of Applications received – State Government

<i>Type of applications</i>	<i>2003-04</i>	<i>2002-03</i>	<i>% Change</i>
	Number	Number	%
Personal affairs	9 212	8 345	10 %
Other	2 246	1 784	26 %
Total applications	11 458	10129	13 %

Table 3 – Breakdown of Applications received – Local Government

<i>Type of applications</i>	<i>2003-04</i>	<i>2002-03</i>	<i>% Change</i>
	Number	Number	%
Personal affairs	54	77	(30 %)
Other	173	136	27 %
Total applications	227	213	7 %

Table 4 – Breakdown of Applications received – universities

Type of applications	2003-04	2002-03	% Change
	Number	Number	%
Personal affairs	5	8	(38 %)
Other	3	9	(67 %)
Total applications	8	17	(53 %)

Finalised applications

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

428 applications were carried forward into the 2003-04 reporting year by State Government agencies. Local Government agencies carried 15 applications forward. There were no applications carried forward by the universities.

A total of 485 applications remained undetermined at 30 June 2004 and have been carried over into the 2004-05 reporting year. Of this total number:

- 468 were made to State Government agencies
- 17 were made to local government authorities

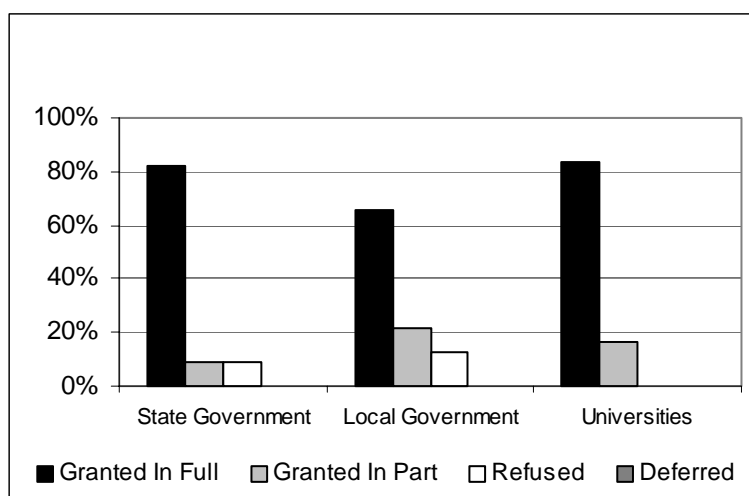
Of the 468 applications made to State Government agencies, 138 were applications carried over to the 2004-05 reporting year by South Australian Police.

280 of the 468 unfinished applications received by State Government agencies were still within the 30-day time frame for issuing a determination.

Of the 17 applications made to local government authorities, 10 applications were still within the 30-day time frame for issuing a determination.

Chart 5 shows that of the 80% of applications made to State Government agencies were granted full access to the documents they requested. Local government authorities reported that in over 60% of cases full access was granted. The outcome of access determinations for all sectors is detailed in tables 13-15 in Appendix C.

Chart 5 – Outcome of Access Applications (all sectors)



Extensions

Section 14A of the FOI Act allows agencies to extend the time period within which an application for access must be dealt.

Pursuant to Section 14A, the principal officer of an agency that is dealing with an application can extend the 30-day period if the application is for access to:

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

1 983 applications were extended in accordance with Section 14A of the FOI Act. Over 90% were extended by between 22 and 28 days.

Of the total number of applications extended:

- 1 940 (18%) of all applications made to State Government agencies were extended.
- 43 (22%) of all applications made to Local Government were extended.
- No applications made to universities were extended.

State Government agencies reported an increase of 1 771 extensions granted pursuant to Section 14A.

Out of the 1 940 extensions reported by State Government agencies, 1 800 extensions were granted to the Royal Adelaide Hospital.

Out of the 43 extensions reported by Local Government, 21 extensions were granted to the City of Charles Sturt with the remaining 22 extensions spread evenly across a number of councils.

The most frequently cited reasons by State and Local Government agencies for obtaining extensions to deal with applications were:

- Conducting large searches for requested information;
- Complexity of applications; and
- Consultation with third parties.

Reasons for Refusal

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

The table below shows the breakdown of the reasons given by agencies across all sectors for the restriction or refusal of access to documents. Complete tables for each specific sector can be found in Tables 10-12 in Appendix C.

Table 5 illustrates that access is restricted or refused in the majority of cases in all sectors because the document being sought was determined to be exempt.

The predominant reason for documents being exempt was due to personal affairs information contained within documents as shown in Table 5 and 6.

Table 5 – Reasons cited for restricting or refusing access (all sectors)

<i>Details</i>	<i>State</i>	<i>Local</i>	<i>Unis</i>
Application incomplete/wrongly directed	60	0	0
Unreasonable diversion of an agency's resources	30	3	0
Abuse of right of access (Section 18(2)(a))	8	0	0
Fees not paid	36	2	0
Deemed refusal (over 30 days to respond)	36	0	0
Exempt document	1 529	46	1
Otherwise available	107	9	0
Documents created prior to 1 January 1987	0	1	0
Ministerial/Agency Certificate (Section 20(3))	0	0	0
Exempt agency	33	0	0
Document does not exist/lost	204	12	0
Total	2 048	73	1

Exemptions claimed

Further analysis demonstrated in Table 6 shows that documents affecting personal affairs, internal working documents and documents containing confidential material respectively, are the most commonly used exemption categories.

Table 6 – Number of applications refused under Schedule 1 of the FOI Act

<i>Clause</i>	<i>Details</i>	<i>State</i>	<i>Local</i>	<i>Unis</i>
1 & 2	Cabinet and/or Executive Council	173	0	0
3	Exempt documents communicated by another government	4	1	0
4	Law enforcement / public safety	347	3	0
5	Intergovernmental / Local Government relations	0	2	0
6	Personal Affairs	1 447	19	1
6a	Exempt electoral records	0	0	0
7	Business affairs	177	8	0
8	Conduct of Research	6	0	0
9	Internal working documents	235	17	0
10	Legal professional privilege	99	7	0
11	Judicial functions	44	0	0
12	Secrecy Provisions	251	0	0
13	Confidential information	288	20	0
14 & 15	Economy / financial or property interests	28	0	0
16	Operations of agencies	60	0	0
17	Subject to contempt	24	0	0
18	Companies and Securities	4	0	0
19	Public or archival collections	0	0	0
Total		3 187	77	1

Ministerial and Agency Certificates

During the reporting year no Ministerial or Agency Certificates were issued.

Time Taken to Respond

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

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

Chart 6 – Time taken to respond - 30 days (all sectors)

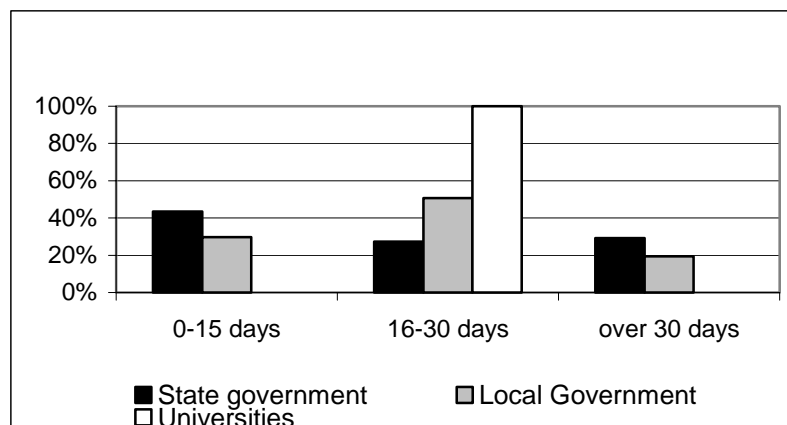


Chart 6 shows that almost half of all applications made to State Government agencies and approximately one third of applications made to Local Government were finalised within the first 15 days. 78% of determined applications across the three sectors were finalised within the 30-day time frame. Approximately 29% of determined applications across all sectors took over 30 days to process. This is significantly higher than last year where only 10% of applications were reported as taking more than 30 days to process.

This increase is largely a result of State Government agencies processing 1 940 applications over the 30 day time limit due to extensions granted pursuant to section 14A of the FOI Act.

State Government agencies reported that the main reasons for this increase were consultation difficulties and the size and complexity of the applications.

Fees and Charges

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

Since 1 July 2001, each year fees and charges for dealing with an FOI application have been increased by an agreed indexation factor. On 1 July 2003 the fee for an application for access was increased from \$21.50 to \$22.30 representing a 5.11 % increase from the previous reporting year. The requirement to waive a fee or charge for financially disadvantaged applicants ensures that these increases do not affect access to information held by agencies bound by the FOI Act.

Applications for information relating to an individuals personal affairs incur no charge for the first two hours spent processing the application, however in all other cases processing charges can be levied once the application is made.

This year 4 335 applications received were eligible for fee waiver, and a further 657 applications were made where agencies exercised their discretion not to charge the application fee. Therefore, in total 4 992 or 46% of all FOI applications completed by agencies were considered eligible for some form of fee waiver compared to 42% from the previous year.

In addition, Members of Parliament have a threshold of \$350 before they can be asked to pay a processing charge. Of the 461 applications made by Members of Parliament this reporting year, all 461 applications received a fee waiver or fee reduction. 456 of these applications were made to State Government agencies. This is an increase of 11% compared to 2002-03.

The estimated cost of processing FOI applications in the reporting year 2003-04 by all three sectors is as follows:

- State Government agencies estimated that it cost \$278 882 to process FOI applications of which they recovered \$149 376 or 54%.
- Local Government authorities estimated that it cost \$6 840 to process FOI applications of which they recovered \$5 223 or 76%.
- Universities estimated that it cost \$500 to process FOI applications of which they recovered \$234 or 47%.

As with all other reporting years the above estimate of the cost to process FOI applications is conservative. Data provided by agencies suggests that the cost in salaries alone for processing FOI applications are in the order of \$1 750 000.

This estimate does not include costs for obtaining legal advice or on-costs. In other words the three sectors combined recovered only \$154 833, or 9% of the overall approximate salary cost.

Amendment of Records Relating to Personal Affairs

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

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

This year State Government agencies and Universities received a total of 124 applications for amendment of records concerning personal affairs, an increase of over 80%. The increase reflects an overall increase in applications. Of particular note, an overall increase in amendment applications made to South Australian Police.

Of the amendment applications received:

- 123 were received by State Government agencies; and
- one was received by universities.

Table 7 – Amendment of Personal Information – State Government

Outcome of Amendment application	2003-04	2002-03	% Change
Amendment agreed	39	15	160 %
Amendment refused	70	45	45 %
Partial amendment	11	6	83 %
Notation added	16	10	60 %

Table 8 – Amendment of Personal Information – Local Government

Outcome of Amendment application	2003-04	2002-03	% Change
Amendment agreed	0	1	(100 %)
Amendment refused	0	1	(100 %)
Partial amendment	0	0	0
Notation added	0	1	(100 %)

Table 9 – Amendment of Personal Information - Universities

Outcome of Amendment application	2003-04	2002-03	% Change
Amendment agreed	1	0	100 %
Amendment refused	0	0	0
Partial amendment	0	0	0
Notation added	1	0	100 %

Table 7 shows that 70 applications for amendment (57% of cases) were refused by State Government agencies. This represents a slight decrease from the 68% of applications refused in the previous reporting year.

Reviews and Appeals

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

Internal Review

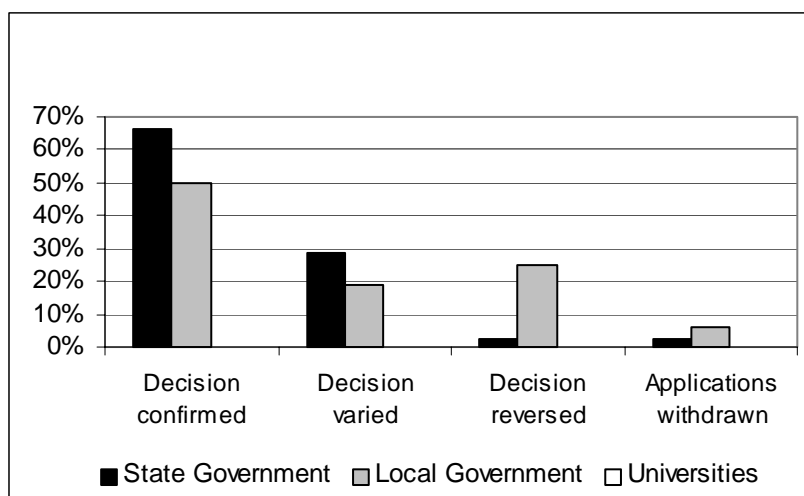
Sections 29 and 38 of the FOI Act allow any person aggrieved by a determination to seek an internal review of that determination.

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

This reporting year, 202 applications for internal review were received compared to 192 applications in 2002-03. This represents a 5 % increase in internal review applications for 2003-04. In the previous reporting year there was a 64 % increase in internal review applications. Considering the number of applications processed increased by 849 this reporting year, it appears that more applicants were satisfied with the original determination than in the previous year.

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

Chart 9 – Results of all finalised internal review applications



This chart shows that in 65 % of cases the determination made on an internal review application confirmed the original decision made by the agency. This is the same as the previous reporting year. (Note: Universities received no internal review applications).

External Review

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

One option is to make an application for external review to the Ombudsman or Police Complaints Authority (PCA). The Ombudsman conducts all external reviews unless the determination was

made by the South Australian Police or the Minister responsible for the South Australian Police. In this case the external review will be conducted by the PCA.

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

The Ombudsman and the PCA report separately on external reviews as part of their annual reporting requirements.

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

Further appeal against a decision made by the District Court can only 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) to extend, as far as possible, the rights of the public –

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

Scope

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

Interpretations

Agency

The definition of agency is currently defined as:

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

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

Accredited FOI Officer

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

Accredited FOI Officers are defined as;

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

Appendix B - Support

FOI Information Line

State Records provides an information service for members of the public seeking advice on how to access information held by all agencies bound by the FOI Act. State Records also provides advice to agencies in relation to the operation and administration of the FOI Act. Over the 2003-04 period State Records answered approximately 700 calls directly related to FOI.

Training Programs

In 2003-04, 11 Accredited FOI Officer training sessions were conducted by the Australian Government Solicitors Office and attended by 152 participants. Twelve FOI General Awareness training sessions were conducted by State Records and attended by 112 participants.

The delivery of combined Records Management and FOI General Awareness training in regional areas continued. Training was delivered in five regional areas including Berri and Mount Gambier twice with a health specific session delivered in Port Pirie. Further sessions will be offered in regional areas in 2004-05.

Appendix C - Tables

Table 10 – Reasons given by State Government agencies for the restriction or refusal of access to documents

Reason for refusing or restricting access	2003-04	2002-03	% Change
Application incomplete / wrongly directed	60	37	62 %
Unreasonable diversion of an agency's resources	30	30	0
Abuse of right of access (section 18(2)(a))	8	8	0
Fees not paid	36	75	(52 %)
Deemed refusal (over 30 days to respond)	36	51	(29 %)
Exempt document	1529	1298	18 %
Otherwise available	107	56	91 %
Documents created prior to 1 January 1987	0	4	(100 %)
Ministerial / Agency Certificate (section 20(3))	0	1	(100 %)
Exempt agency	33	51	(35 %)
Document does not exist / lost	204	191	7 %
Total	2048	1783	15 %

Table 11 – Reasons given by Local Government agencies for the restriction or refusal of access to documents

Reason for refusing or restricting access	2003-04	2002-03	% Change
Application incomplete / wrongly directed	0	2	(200 %)
Unreasonable diversion of an agency's resources	3	3	0
Abuse of right of access (section 18(2)(a)) ¹	0	1	(100 %)
Fees not paid	2	2	0
Deemed refusal (over 30 days to respond)	0	1	(100 %)
Exempt document	46	40	15 %
Otherwise available	9	4	125 %
Documents created prior to 1 January 1987	1	0	100 %
Ministerial / Agency Certificate (section 20(3))	0	0	0
Exempt agency	0	0	0
Document does not exist / lost	12	13	(8 %)
Total	73	66	11 %

Table 12 – Reasons given by Universities for the restriction or refusal of access to documents

Reason for refusing or restricting access	2003-04	2002-03	% Change
Application incomplete / wrongly directed	0	1	(100 %)
Unreasonable diversion of an agency's resources	0	0	0
Abuse of right of access (section 18(2)(a))	0	0	0
Fees not paid	0	0	0
Deemed refusal (over 30 days to respond)	0	0	0
Exempt document	1	5	(80 %)
Otherwise available	0	0	0
Documents created prior to 1 January 1987	0	0	0
Ministerial / Agency Certificate (section 20(3))	0	0	0
Exempt agency	0	0	0
Document does not exist / lost	0	0	0
Total	1	6	(83 %)

Table 13 – Completed Applications (State Government)

Outcome of Application	2003-04	2002-03	% Change
	Number	Number	%
Granted In Full	8803	7787	13 %
Granted in Part	941	919	2 %
Refused	945	736	28 %
Deferred	11	21	(48 %)
<i>Completed applications</i>	<i>10 700</i>	<i>9463</i>	<i>13 %</i>
<i>Plus</i>			
Transferred in full	148	174	(15 %)
Withdrawn	142	86	65 %
Total Actually Processed	10 990	9723	13 %

Table 14 – Completed Applications (Local Government)

Outcome of Application	2003-04	2002-03	% Change
	Number	Number	%
Granted In Full	128	145	(12 %)
Granted in Part	42	33	27 %
Refused	25	14	79 %
Deferred	0	3	(100 %)
<i>Total completed applications</i>	<i>195</i>	<i>195</i>	<i>0</i>
<i>Plus</i>			
Transferred in full	0	1	(100 %)
Withdrawn	15	4	275 %
Total Actually Processed	210	200	5 %

Table 15 – Completed Applications (Universities)

Outcome of Application	2003-04	2002-03	% Change
	Number	Number	%
Granted In Full	5	10	(50 %)
Granted in Part	1	3	(67 %)
Refused	0	3	(100 %)
Deferred	0	0	0
<i>Total completed applications</i>	<i>6</i>	<i>16</i>	<i>(63 %)</i>
<i>Plus</i>			
Transferred in full	1	0	100 %
Withdrawn	1	1	0
Total Actually Processed	8	17	(53 %)

Table 16 – State Government Applications Received by Portfolio

Ministerial Portfolio	Personal affairs	Other	Total number of applications
Administrative & Information Services	72	182	259
Education & Children's Services	101	59	160
Environment & Heritage	3	79	82
Further Education, Employment, Science & Technology	7	11	18
Human Services	6674	583	7277
Justice	2238	895	3133
Premier & Cabinet	6	56	62
Primary Industries & Resources	3	49	52
Trade and Economic Development	0	23	23
Transport & Urban Planning	20	109	129
Treasury & Finance	2	47	49
Water, Land & Biodiversity Conservation	3	34	37
<i>Land Management Corporation</i>	<i>0</i>	<i>5</i>	<i>5</i>
<i>WorkCover Corporation</i>	<i>81</i>	<i>12</i>	<i>93</i>
Total	9210	2144	11 354

Table 17 – Individual Ministerial Reporting

Individual Ministerial Reporting	Personal affairs	Other	Total number of applications
Hon Kevin Foley	0	5	5
Hon Paul Holloway	0	12	12
Hon Patrick Conlon	0	7	7
Hon Lea Stevens	2	12	14
Hon John Hill	0	21	21
Hon Stephanie Key	0	4	4
Hon Michael Wright	0	40	40
Hon Jane Lomax-Smith	0	1	1
Total	2	102	104

Note

The table above does not list all Ministers. Statistics for the other Ministers Offices are reported as part of the overall portfolio statistics in Table 16.

Appendix D – 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 that 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, the agency must first endeavour to assist the applicant to amend the application (so that it would no longer divert the agency's resources) before refusing to deal with it.

Abuse of the right of access

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.

Exempt document

Section 20(a) allows an agency to refuse access to exempt documents, of which there are 19 classes. Refer to Table 6.

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 person affairs of the applicant, or
- it is a document that is reasonably necessary to enable some other document (being a document to which the agency has given access under 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 F.

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 E – FOI Act Schedule 1 Exempt Documents

Clause 1 - Cabinet documents

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

Clause 2 - Executive Council documents

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

Clause 3 – Exempt documents communicated by another government

Documents containing information communicated to agencies bound by the FOI Act either by the Commonwealth or another State Government, and, where notice has been received that this information is exempt under corresponding Freedom of Information laws.

Clause 4 - Documents affecting law enforcement and public safety

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 to 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* 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. It also refers to documents, which consist of information that has 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.

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 that, 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.

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, etc

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

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

Clause 19 - Private documents in public library or archival collections

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

Appendix F – Exempt Agencies – State Government

The following is a list of Exempt Agencies 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*;

* * * * *

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

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

- (a) the Senior Secondary Assessment Board of South Australia established under the *Senior Secondary Assessment Board of South Australia Act*;
- (b) each electricity corporation within the meaning of the *Electricity Corporations Act 1994*;
- (ba) the South Australian Independent Industry Regulator established under the *Independent Industry Regulator Act 1999*; and
- (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*.