

ANNUAL REPORT

YEAR ENDED
JUNE
2006

Freedom of Information Act 1991



Government
of South Australia

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

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The Hon Michael Wright MP

MINUTE



Government
of South Australia

MINUTES forming ENCLOSURE to

File 06SF00011/MOA

Reg 06/03488

Minister for
Administrative Services &
Government Enterprises
Minister for
Industrial Relations
Minister for
Recreation, Sport
& Racing

To HON MIKE RANN MP
PREMIER

Subject

**TABLING OF ANNUAL REPORT IN PARLIAMENT – FREEDOM OF
INFORMATION**

Pursuant to section 54 of the *Freedom of Information Act 1991*, I enclose three copies of the Freedom of Information 2005/2006 Annual Report for tabling in both Houses of Parliament by no later than 22 November 2006. Thank you for your assistance.

A handwritten signature in black ink, appearing to read "John Hill".

JOHN HILL
A/MINISTER FOR ADMINISTRATIVE SERVICES &
GOVERNMENT ENTERPRISES
A/MINISTER FOR INDUSTRIAL RELATIONS
A/MINISTER FOR RECREATION, SPORT & RACING

Date: 10-11-06

Enc.

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FOREWORD

The 2005-06 reporting year represents the first full year of reporting following the last amendments to the *Freedom of Information Act 1991* (the FOI Act). These amendments represented some significant changes to the legislation particularly in regard to the power of the external reviewing bodies and a strengthening of the Objects of the Act to favour disclosure over non-disclosure.

It was also the first year in which the Freedom of Information Management System, more commonly referred to as FOIMS, was used to collect statistical data from agencies to help create the annual report. FOIMS is a web-based database for recording and managing FOI applications and is the first of its type in Australia. I am pleased to report that most agencies are now registered to use the system, with 330 people having been trained since the introduction of the system 18 months ago, 142 of which were trained in this reporting year.

A benefit of using FOIMS is the ability of all agencies to record more accurate statistics regarding fees and charges collected. Agencies estimated a total cost to government for the administration of FOI to be approximately \$5 million. This includes costs associated with processing applications, development and maintenance of FOIMS, reviews of determinations, obtaining legal advice and training. Only the costs for processing applications can be recovered through fees and charges. Across government \$122 000 (or 2%) was recouped by agencies.

The 2005-06 reporting year also saw the development of an on-line FOI awareness education package designed to make available to all State and Local Government agencies and Universities the opportunity to provide their staff with a greater understanding of freedom of information processes in South Australia. Delivery of this package is planned for 2006-07.

State Records continues to provide valued support to FOI officers through various forums and training programs. Over the 2005-06 period State Records answered 981 telephone and 389 email requests from agencies and members of the public directly related to FOI. In addition to the ongoing Accredited and General Awareness FOI training courses, State Records published a series of FOI Information Sheets on its website. They are designed to provide guidance to FOI Officers processing requests and will play a significant role in ensuring FOI decisions become more consistent across all agencies.

Unlike previous years, this year saw a slight decrease in the overall number of FOI applications being made to agencies. The statistics show that there were 10 973 FOI applications for access received which was a decrease of 510 applications compared with the previous reporting year. This represents a decrease of 5% in State Government agencies and a 9% increase in Local Government agencies.

There was a significant increase in extensions of time for dealing with an application, with 1774 extensions claimed this reporting year compared to 1154 the previous year. This represented an increase of 54%. Generally, an extension is granted where the request involves access to a large number of documents.

I would like to take this opportunity to express my sincere thanks to the staff members of State Records of South Australia for their commitment to providing quality services to both agencies and myself. I would also like to thank all FOI officers across government involved in the processing of FOI applications. Agencies have continued to embrace opportunities to increase their knowledge and skills in FOI and improve the services they offer to the public.

The Hon Michael Wright MP

**MINISTER FOR ADMINISTRATIVE SERVICES
AND GOVERNMENT ENTERPRISES**

THE YEAR IN REVIEW

Introduction

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

In order to produce the Annual Report all State Government entities, including statutory authorities and government business enterprises, Local Government and South Australian Universities are required to make available to State Records Freedom of Information (FOI) annual statistical information for the purpose of preparing this report. Statistics collected include the number and type of FOI requests made to agencies and the outcome of those requests.

Pursuant to Section 54AA of the FOI Act, this requirement was gazetted on 15 June 2006.

Agencies bound by the FOI Act

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

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

Amendments to the Freedom of Information (Exempt Agency) Regulations 1993

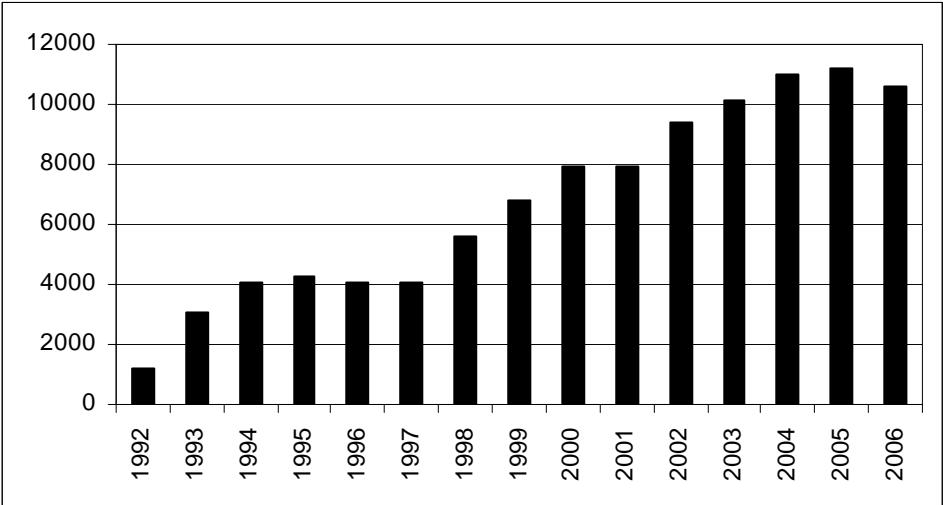
On 29 September 2005, each agency established by, or under, the *Health and Community Services Complaints Act 2004* was proclaimed as exempt by the *Freedom of Information (Exempt Agency) Regulations 1993* (the Regulations).

These agencies were declared exempt due to the sensitive and personal nature of the information with which they deal, and to ensure communication between complainants and the agencies remains confidential. While a number of exemptions under the FOI Act may have been sufficient to exclude the release of documents, it was recognised there could be reluctance by users of health and community services to make complaints without assurance that the process is exempt from the FOI Act.

State Government

The FOI Act commenced on 1 January 1992. Since that time, there has been a total of 101 418 applications for access made to South Australian State Government agencies. Chart 1 below shows the breakdown of these applications over the last 15 years. It should be noted that in 1992 the Act only operated for six months.

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



Freedom of Information Management System (FOIMS)

During the previous reporting year, State Records developed and implemented an electronic across government Freedom of Information Management System known as FOIMS.

FOIMS is a web-based database that provides an accessible, accurate and efficient recording system for all agencies to manage their FOI applications. FOIMS provides the Government with a system to allow accurate and more responsive reporting on the operation of the FOI Act in South Australia.

During the previous and current reporting years, State Records registered the majority of agencies on FOIMS and many of these agencies commenced using the system on 1 July 2005. This has allowed State Records to use FOIMS for the first time this year to derive annual FOI statistics to enable this report to be created.

Although many agencies were registered on FOIMS at the start of the reporting year, not all of these agencies commenced using FOIMS immediately. For this reason, parts of the annual statistics for this reporting year were collected using the manual statistical return reporting method used in previous years. For the next reporting year, all agencies will be required to use FOIMS to report their annual statistics and there will be no need to use the manual reporting forms. This will result in improved efficiencies in all agencies and will provide more accurate statistics throughout the year.

The most recent upgrade to FOIMS occurred in April 2006 with the release of version 1.0.6. The most significant change was an amendment to record the inclusion of Contract Confidentiality Clauses in Contracts. An updated FOIMS User Guide, version 3, was also made available. The User Guide was also developed to assist agencies in conducting in-house training for new FOIMS users.

During the reporting year, State Records trained 142 people in how to operate the system including recording determinations, calculating fees and charges and creating reports for their agency. Since the introduction of FOIMS 18 months ago, a total of 330 people have been trained in the use of the system.

Limited FOIMS training for newly registered agencies will continue in 2006-07. State Records will continue to offer telephone and email assistance to all agencies regarding FOIMS. Over the last financial year, State Records answered 345 telephone and 126 email enquiries from agencies regarding FOIMS.

FOI Advice Service

State Records provides an advice service for members of the public seeking information on how to access documents held by agencies bound by the FOI Act. State Records also provides advice to agencies in relation to the operation and administration of the FOI Act. Over the 2005-06 period State Records answered 981 telephone and 389 email requests directly related to FOI.

Accredited FOI Officers

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

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

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

In 2005-06, State Records provided nine Accredited FOI Officer training sessions, attended by 157 participants. The Australian Government Solicitors Office facilitated the sessions.

During the reporting year an FOI Information Sheet was developed to explain the term 'Accredited FOI Officer'. This can be found on the State Records website at <http://www.archives.sa.gov.au/foi/foiadmin/index.html>.

General Awareness Training

State Records conducted eight FOI General Awareness training sessions in 2005-06, attended by approximately 141 participants.

During 2005-06 State Records began the development of FOI awareness education to be delivered in an on-line environment to provide assistance to State and Local Government agencies and Universities in relation to FOI administration in their agencies. The aim of this package is to raise awareness of FOI within government agencies and authorities to assist them in meeting the State Governments' requirement that they facilitate the development of a more open and accountable government and to meet their legislative obligations. In addition, by providing agencies bound by the FOI Act with the opportunity to introduce their staff to the principles of FOI in an on-line environment, State Records has the opportunity to broaden the general knowledge of agency staff and to reach more staff particularly in regional and remote areas.

The FOI awareness education package will be incorporated into the State Records on-line records management training opportunities via ERNI (Electronic Resource Network Initiative). The addition of the FOI awareness education package to the current suite of on-line education packages has the opportunity to broaden the freedom of information knowledge of State and Local Government agencies and Universities.

FOI Workshops

The Ombudsman of South Australia conducted three Workshops entitled *Dealing with an FOI Application (including Writing a Determination)*. Approximately 64 participants attended these workshops.

Although the demand for these workshops was very high during the reporting year, the Ombudsman's Office advised that it was only able to deliver a limited number of sessions due to insufficient resources.

FOI Officers' Forum

State Records hosted a Freedom of Information Officers' Forum on 5 April 2006 attended by approximately 150 participants.

The purpose of FOI Officers' Forums is for FOI officers to improve their knowledge and skills and to keep them informed of any changes to the FOI Act including the administration of the Act. The Forum also serves to strengthen and facilitate the network between FOI officers for mutual support and advice.

To assist with the organisation of the FOI Officer's Forum, an Advisory Group establishes the agenda for the Forum. The following agencies are currently represented on the Advisory Group:

- Department of Health;
- Department for Families and Communities;
- the Justice portfolio;
- Department for Primary Industry and Resources South Australia;
- Local Government; and
- the South Australian Universities.

The Forum on 5 April 2006 included presentations by:

- the Office of the State Ombudsman on the auditing powers of the Ombudsman;
- the Crown Solicitor's Office on documents containing joint personal affairs; and
- State Records on an update to FOIMS, FOI education online and FOI information sheets.

FOI Process Guides and Information Sheets

The FOI Process Guides and FOI Information Sheets provide guidelines and advice for FOI Officers when processing FOI applications. These documents are regularly updated to reflect any amendments to the FOI Act. The Process Guides and Information Sheets can be found on the State Records website at <http://www.archives.sa.gov.au/foi/foiadmin/index.html>.

Reporting to the Minister

Throughout the year regular monthly reporting is provided to the Minister on FOI applications received by the major State Government agencies on non-personal FOI requests. Excluded from these reports are hospitals and smaller agencies such as health services. The reports for the Minister are collated from the information that is entered into FOIMS by agencies.

Contracts with Approved Confidentiality Clauses

The amendments to the FOI Act in 2004 included changes to clauses 7 (documents affecting business affairs) and 13 (documents containing confidential material) of Schedule 1. These amendments affect contracts entered into by the Crown, a State Government agency, Local Government or a University.

Business Affairs or Confidential Material exemptions can no longer be claimed for a contract document merely because it is a contract. A contract, or part of a contract, can only be

considered exempt from release (unless another exemption applies) if it contains a confidentiality clause that has been approved by a Minister, a Minister's delegate, or in the case of Local Government and Universities, approved by the agency itself.

Clause 13 also requires the number of contracts entered into by the Crown or an agency that contain approved confidentiality clauses to be reported annually to Parliament (refer to Appendix D for a description of the exemption Clause 13).

These amendments came into force on 1 January 2005. This is the second year that confidentiality clauses in contracts have been reported.

For the 2005-06 reporting year, agencies subject to the FOI Act reported 57 contracts containing an approved confidentiality clause as described in Clause 13. This is less than the previous reporting year where 62 contracts were reported containing approved confidentiality clauses. This decrease may be due to agencies making more of their contracts accessible to the public to meet the Objects of openness and accountability outlined in the FOI Act.

Of the 57 contracts reported that contained an approved confidentiality clause as described in Clause 13:

- State Government agencies reported entering into 26 contracts.
- Local Government reported entering into 19 contracts.
- Universities reported entering into 12 contracts.

Agencies are only required to report the fact that a confidentiality clause was included in a contract. No further information is provided to analyse what types of contracts these were.

Documents provided outside the FOI process

Consistent with the Objects of the Act, agencies are encouraged to provide access to information outside of FOI wherever possible. Access is usually provided through inspection, purchase or free access. A description of the types of documents that may be available can be found in the agency's Information Statement. Information Statements must be published either in an agency's Annual Report or on an agency's website.

This reporting year, statistics collected from the three sectors suggest that agencies are becoming more proactive in the disclosure of particular types of information.

In 199 cases, State and Local Government agencies refused or provided restricted access because the documents, or information, could be provided outside of the FOI process. This represents a 29% increase compared to the previous reporting year. This statistic is even more significant when the overall decrease in applications processed this year, compared to the previous year, is taken into consideration.

STATISTICAL SUMMARY

This year there were 10 973 FOI applications for access received by all agencies bound by the FOI Act, including 104 applications brought forward from the 2004-05 reporting year. This represents a decrease of 510 (5%) applications compared to the number of applications received in the previous reporting year. Determinations were issued for 8490 applications.

Of the 10 973 applications received:

- 10 692 were received by State Government agencies (a decrease of 537 applications) with 8529 of these applications processed and 8282 successfully determined;
- 269 were received by Local Government (an increase of 25 applications) with 222 of these applications processed and 202 successfully determined; and
- 12 were received by the South Australian Universities (an increase of 2 applications) with six of these applications processed and successfully determined.

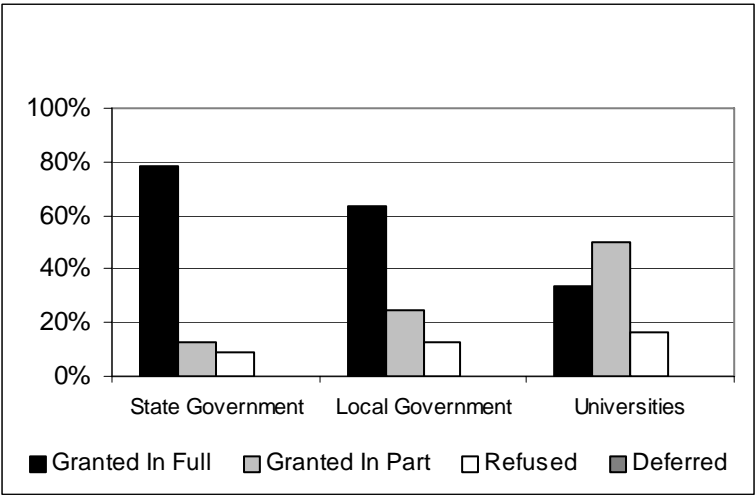
This is the first time since 2001 that the overall number of access applications received has decreased. A major portion of this decrease appears to be due to a significant reduction in the number of applications received from Members of Parliament with approximately 300 less applications received compared to the previous year. The decrease in applications can also be a reflection of a growing confidence and trust in Government and indicate that agencies are making more information available outside the FOI process.

Chart 2 (below) shows that in 79% of FOI applications made to State Government agencies, full access was granted to the documents requested. Local Government reported that in 63% of cases full access was granted and Universities 33%. The outcome of access determinations for all sectors is detailed in tables 12-14 in Appendix B.

Compared to the previous reporting year, State Government agencies are providing full access to documents in 4% less cases and Local Government in 3% less cases. While partial access to documents has increased by 5% compared to last reporting year, overall agencies are refusing access to documents in fewer cases. Refusal occurred in 754 cases in 2005-06 compared to 1077 cases last year.

The reduction in the number of applications where full access was given is likely to be due to an increase in the complexity of applications received. Agencies reported a 56% increase in the number of extensions granted this reporting year. Extensions can be granted under section 14A the FOI Act when an application is seeking access to a large number of documents, or requires extensive searching through large amounts of information, or involves consultation that cannot reasonably be carried out within the 30 day time limit.

Chart 2 – Outcome of Access Applications - All Sectors



State Government Summary

For the 2005-06 reporting year there were 10 692 FOI applications for access received by State Government agencies, including 96 applications brought forward from the 2004-05 reporting year. Of these, agencies processed 8529 and determined 8282. These figures represent a 23% decrease in FOI applications processed compared to 2004-05.

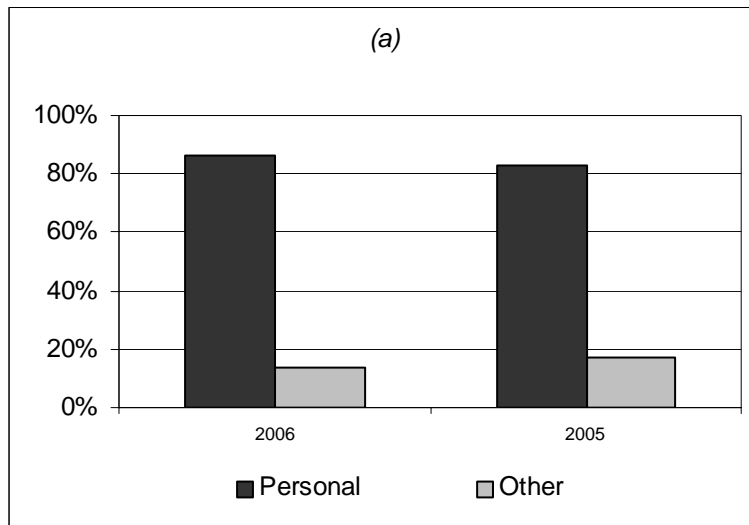
Key findings from the statistics provided by State Government agencies include:

- 67% of applications processed in 2005-06 were finalised within 30 days, which is 10% less than the previous reporting year.
- Overall there was a small decrease of 2% in the number of personal affairs applications received compared with the previous reporting year. The number of personal affairs applications determined also decreased. The percentage of personal applications determined compared to non-personal applications determined increased by 3% compared to the previous year (see Chart 3a).
- The percentage of applications where full access was given decreased by 4% from the previous reporting year (see Chart 3b).
- Compared with the previous year the number of applications received for non-personal information decreased by 16%.
- 1729 extensions were granted this year compared to 1116 extensions the previous year, representing an increase of 55%.
- A total of 2163 unfinished applications are to be carried over to 2006-07. This is an increase of 300% compared to the previous year.
- There was a 61% decrease in the number of applications received from Members of Parliament from 519 applications last year to 201 applications this year.

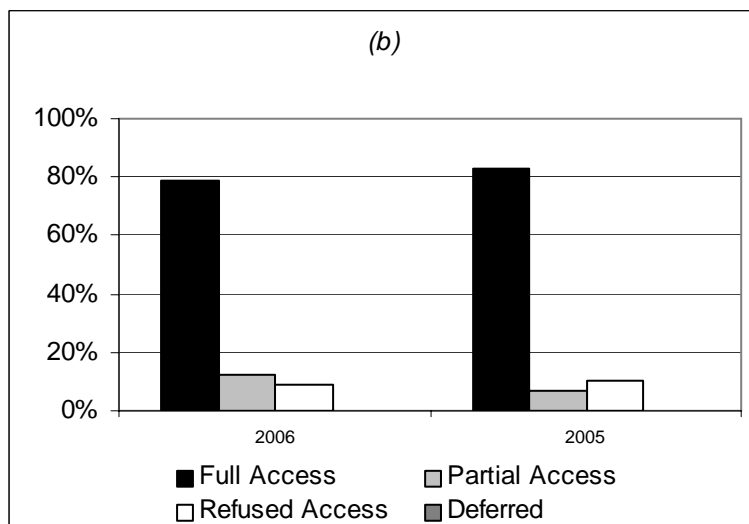
For the 2005-06 reporting year, State Government agencies reported having entered into 26 contracts that contained an approved confidentiality clause as defined by Clause 13 of Schedule 1 of the FOI Act. The number of contracts with approved confidentiality clauses increased by 21 compared to the previous reporting year, however, the requirement to report contracts containing confidentiality clauses was only in operation for the last six months of the 2004-05 reporting year.

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

*Chart 3a - Personal and non-personal access applications determined - State Government
(8282 determined access applications 2005-06)*



*Chart 3b – Outcome of all access determinations - State Government
(8282 determined access applications 2005-06)*



Note: The one application that was deferred by State Government could not be depicted on the above chart due to its scale.

Local Government Summary

This reporting year there were 269 FOI applications for access received by Local Government, including 8 applications brought forward from the 2004-05 reporting year. This represents a 9% increase compared to the previous reporting year. Local Government processed 222 applications of which 202 were determined.

Key findings from the statistics provided by Local Government include:

- 77% of access applications in 2005-06 were processed within 30 days, which is 6% less than the previous year.
- A 29% increase in personal affairs applications received compared to the previous reporting year.
- An increase of 5% in non-personal affairs applications received compared to the previous reporting year.
- A 16% increase in the number of applications that required the time limit to be extended. There were 44 extensions granted this year compared to 38 extensions in the previous year.
- A total of 47 unfinished applications are to be carried over to the 2006-07 reporting year. This represents an increase of 30 unfinished applications being carried over compared to the previous year.
- Two applications were received from Members of Parliament compared to four in the previous year.

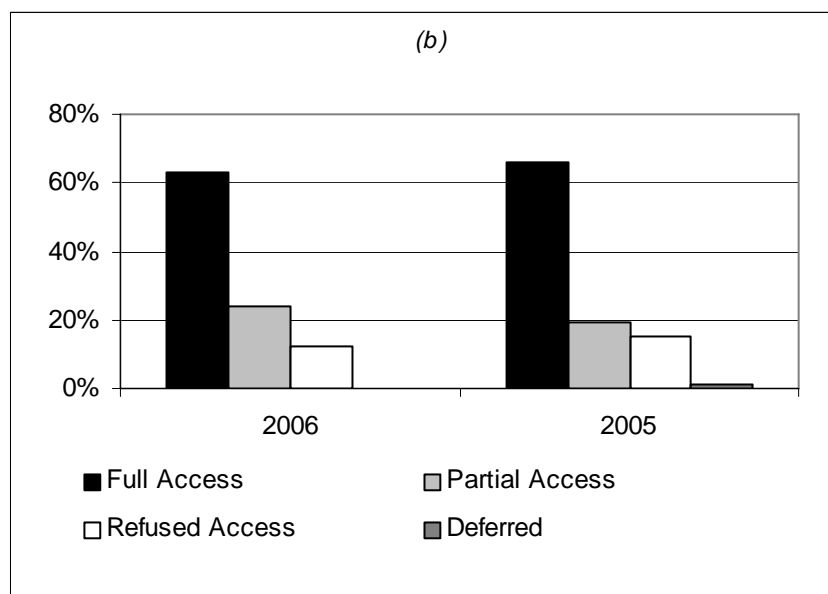
For the 2005-06 reporting year, Local Government reported having entered into 19 contracts that contained an approved confidentiality clause as defined by Clause 13 of Schedule 1 of the FOI Act. The previous year it was reported that agencies entered into 18 contracts containing approved confidentiality clauses.

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

*Chart 4a - Personal and non-personal access applications determined - Local Government
(202 determined access applications 2005-06)*



*Chart 4b - Outcome of all access determinations - Local Government
(202 determined access applications 2005-06)*



Universities Summary

South Australian Universities reported receiving 12 applications for access, which represents a 17% increase compared to the previous year.

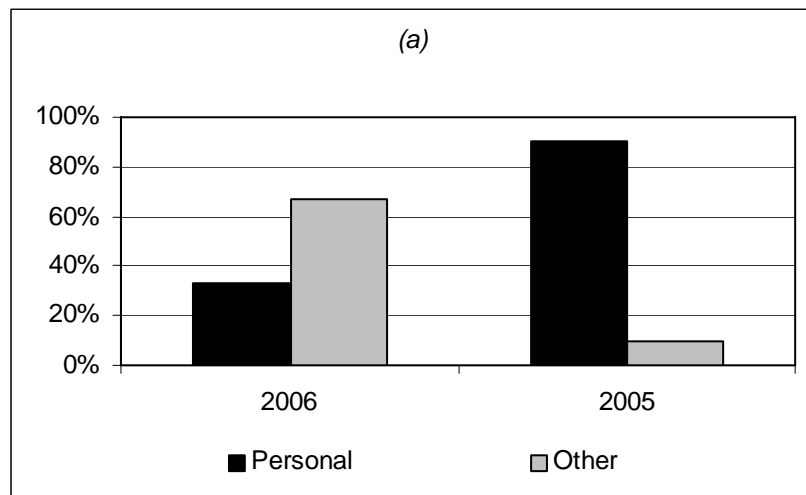
Key findings relating to statistics provided by Universities include:

- At the close of the reporting year, six of the 12 applications received were processed and all but one of these applications was processed within the 30-day time frame.
- Six personal affairs applications were received compared to nine in the previous reporting year.
- Six non-personal affairs applications were received compared to one in the previous reporting year.
- No applications were received from a Member of Parliament.

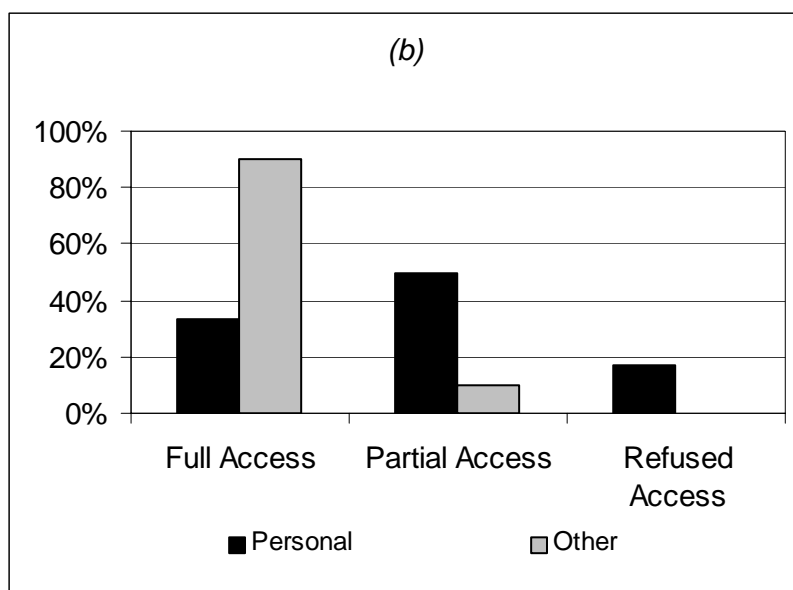
For the 2005-06 reporting year, Universities reported having entered into 12 contracts that contained an approved confidentiality clause as defined by Clause 13 of Schedule 1 of the FOI Act. This represents a decrease of 69% compared to the previous year.

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

Chart 5a - Personal and non-personal access applications determined - Universities (6 determined access applications 2005-06)



*Chart 5b – Outcome of access determinations – Universities
(6 determined access applications 2005-06)*



ACTIVITY UNDER THE FOI ACT

Applications received for access

Volume

The combined results of annual statistical returns for all agencies bound by the FOI Act show that there were 10 973 FOI applications received during the reporting year. This figure includes applications brought forward from the 2004-05 reporting year.

Of the 215 agencies that provided statistics for the 2005-06 Annual Report, 24% (35) of State Government agencies and 52% (33) of Local Government agencies received no FOI applications during 2005-06.

Since 1999-2000 the top five agencies in terms of volume of applications have been reported in detail for this report. The examination of those same agencies has continued for each subsequent year. In 2002, a sixth agency, the Lyell McEwin Hospital, was included due to a marked increase in the volume of applications received. For the 2005-06 reporting year these top six agencies represent 67% of the total applications received by agencies across the three sectors bound by the FOI Act.

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

<i>Agency</i>	<i>2005-06</i>	<i>2004-05</i>	<i>% Change</i>
Royal Adelaide Hospital	3204	2875	11%
South Australian Police (SAPOL)	1685	2457	(31%)
Flinders Medical Centre	752	765	(2%)
Queen Elizabeth Hospital	675	723	(7%)
Lyell McEwin Hospital	631	746	(15%)
Children Youth and Women's Health Service (Women's and Children's Hospital)	371	412	(10%)

Type

Agencies are asked to distinguish between access applications relating to the applicant's 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>2005-06</i>	<i>2004-05</i>	<i>% Change</i>
Personal affairs	9 082	9 309	(2%)
Other	1 610	1 920	(16%)
Total applications	10 692	11 229	(5%)

Table 3 – Breakdown of Applications received – Local Government

<i>Type of applications</i>	<i>2005-06</i>	<i>2004-05</i>	<i>% Change</i>
Personal affairs	66	51	29%
Other	203	193	5%
Total applications	269	244	10%

Table 4 – Breakdown of Applications received – Universities

<i>Type of applications</i>	<i>2005-06</i>	<i>2004-05</i>	<i>% Change</i>
Personal affairs	6	9	(33%)
Other	6	1	500%
Total applications	12	10	20%

Applications carried over into the next reporting year

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

96 unfinished applications were carried forward from 2004-05 by State Government agencies into this reporting year. Local Government carried 8 applications forward and there were no applications carried forward by the Universities.

A total of 2216 applications remained undetermined at 30 June 2006 and have been carried over into the 2006-07 reporting year. Of this total number:

- 2163 were made to State Government agencies.
- 47 were made to Local Government.
- 6 were made to Universities.

At the close of the reporting year 329 (15%) of the 2163 unfinished applications received by State Government agencies were still within the 30 day time frame for issuing a determination. This represents a decrease of 28% from the previous reporting year, which may be a direct result of there being more unfinished applications carried over this year compared to the previous year.

Of the 47 unfinished applications made to Local Government, 18 applications (38%) were still within the 30 day time frame for issuing a determination. This represents a decrease of 26% from the previous reporting year, which may also be a direct result of there being more unfinished applications carried over this year compared to the previous year.

Extensions

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

Pursuant to Section 14A, the principal officer of an agency 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 that requires consultation under Part 3 Division 2 of the FOI Act that can not be reasonably undertaken within the time period.

Overall, 1774 applications were extended, with 95% extended by 28 days or more.

Of the total number of applications extended:

- 1729 were to State Government.
- 44 were to Local Government.
- 1 was to a University.

State Government agencies reported an increase of 613 (55%) extensions granted compared to last reporting year. Of the 1729 extensions reported by State Government agencies, 1500

extensions were granted to the Royal Adelaide Hospital which was 500 more than the previous reporting year. This may be due to the Hospital receiving 11% more applications in 2005-06.

Of the 44 extensions reported by Local Government, 18 extensions were granted to the City of Charles Sturt with the remaining 26 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:

- Consultation with third parties.
- Conducting large searches for requested information.
- Complexity of applications that often require legal advice.
- Lack of staff able to process large applications.

Reasons for Refusal

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

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

Table 5 illustrates that access was restricted or refused in the majority of cases by State and Local Government and Universities because the document being sought was determined to be exempt.

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

<i>Details</i>	<i>State</i>	<i>Local</i>	<i>Uni</i>
Application incomplete/wrongly directed	32	0	0
Unreasonable diversion of an agency's resources	25	2	0
Abuse of right of access (Section 18(2)(a))	6	0	0
Fees not paid	34	1	0
Deemed refusal (over 30 days to respond)	29	0	0
Exempt document	1274	47	3
Otherwise available	192	7	0
Documents created prior to 1 January 1987	2	0	0
Exempt agency	32	0	0
Document does not exist/lost	240	16	1
Total	1866	73	4

Exemptions claimed

Table 6 shows that the most claimed exemption category reported was documents affecting personal affairs. The exemption relating to documents affecting law enforcement/public safety was also claimed in many cases, as were the legal professional privilege, business affairs and secrecy provisions exemption categories.

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

<i>Clause</i>	<i>Details</i>	<i>State</i>	<i>Local</i>	<i>Unis</i>
1 & 2	Cabinet and/or Executive Council	69	0	0
3	Exempt documents communicated by another government	1	0	0
4	Law enforcement / public safety	270	2	0
5	Intergovernmental / Local Government relations	8	3	0
6	Personal affairs	729	30	0
6a	Exempt electoral records	0	0	0
7	Business affairs	123	8	0
8	Conduct of research	1	0	0
9	Internal working documents	4	2	1
10	Legal professional privilege	126	10	0
11	Judicial functions	103	0	0
12	Secrecy provisions	122	0	0
13	Confidential information	79	6	1
14 & 15	Economy / financial or property interests	11	1	0
16	Operations of agencies	26	2	0
17	Subject to contempt	7	0	0
18	Companies and Securities	1	0	0
19	Public or archival collections	0	0	0
Total		1680	64	2

Time Taken to Respond

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

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

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

Chart 6 – Time taken to respond - All Sectors

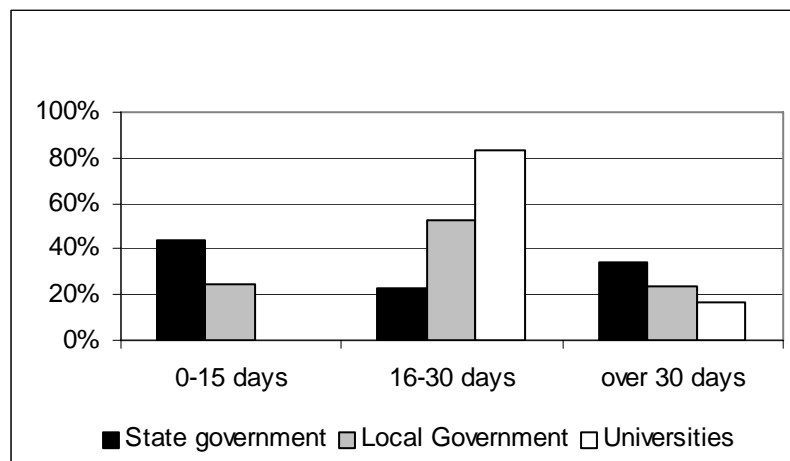


Chart 6 shows that almost half of all applications made to State Government agencies and approximately one quarter of applications made to Local Government were finalised within the first 15 days. Universities processed the majority of applications within the 30 day timeframe. In 67% of cases, determined applications across the three sectors were finalised within the 30 day time frame, while 34% of determined applications across all sectors took over 30 days to process, which is a 10% increase compared to the previous reporting year.

State Government agencies cited the following three main reasons for the increase in time to respond to FOI applications:

- large numbers of simultaneous applications;
- large amounts of documentation captured by FOI applications; and
- consultation with third parties.

Cost of FOI

Agencies are able to mitigate some of the costs involved in processing FOI requests by charging applicants fees and charges in accordance with the *FOI Fees and Charges Regulations 1993*.

Agencies are asked to report the estimated fees and charges that could be levied for processing FOI applications and the actual amount recovered during the year.

The cost to government for the administration of FOI including the processing of FOI applications, training, seeking legal advice, conducting reviews and the management of FOIMS was estimated to be \$5 million for the reporting year. While agencies can apply fees and charges for the processing of FOI applications in relation to finding, sorting, compiling and copying documents, as well as undertaking any consultation required by the Act, only \$122 000 (2%) was recovered.

The amount recovered in the 2005-06 reporting year for the three sectors is as follows:

- State Government agencies reported recovering approximately \$117 000;
- Local Government authorities reported recovering approximately \$4 000; and
- Universities reported recovering approximately \$19 000

Costs associated with processing FOI requests such as those in relation to obtaining legal advice and the cost of training FOI officers amount to approximately \$228 000 across all three sectors.

The Crown Solicitor's Office, which forms part of the Attorney-General's Department, advised of a significant increase in the advice and representation it provides to agencies regarding FOI applications. In the last three financial years, the amount of time the Crown Solicitor's Office has spent on FOI matters has increased by an average of 7.8% per annum. It is estimated that its current workload equates to an annual salary of \$157 000.

Fee Waiver

This reporting year 3089 applications received were eligible for fee waiver, and in a further 872 applications, agencies exercised their discretion not to charge the application fee. Therefore, in total, 3961 or 36% of all FOI applications were considered eligible for some form of fee waiver. This is 10% fewer than the previous reporting year.

Applications from Members of Parliament

One type of fee waiver provided in the FOI Act concerns applications made by Members of Parliament. Members of Parliament have a fee free threshold of \$1000 before they can be asked to pay a processing charge. This reporting year 203 applications were received from Members of Parliament; of these 201 were made to State Government agencies. This represents a decrease of 61% compared to the 2004-05 reporting year.

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 would include why the applicant believes the record should be amended and may also include any information that the applicant believes will make the record complete.

This year State and Local Government agencies received a total of 157 applications for amendment of records concerning personal affairs. This represents an increase of 37% compared to last reporting year.

Of the amendment applications received:

- 156 were received by State Government agencies;
- 1 was received by Local Government; and
- Universities received no applications for amendment.

Table 7 shows that 55 of the 156 (35% of cases) amendment applications received by State Government agencies were refused. This represents a decrease from the 52% of amendment applications refused by State Government in the previous reporting year.

Table 7 – Amendment of Personal Information – State Government

<i>Outcome of Amendment application</i>	<i>2005-06</i>	<i>2004-05</i>
Amendment agreed	40	39
Amendment refused	55	59
Partial amendment	3	10
Notation added	6	13

Reviews and Appeals

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

Internal Review

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

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

There were 151 applications for internal review received this reporting year, with State Government agencies receiving 130, Local Government receiving 18 and Universities receiving three.

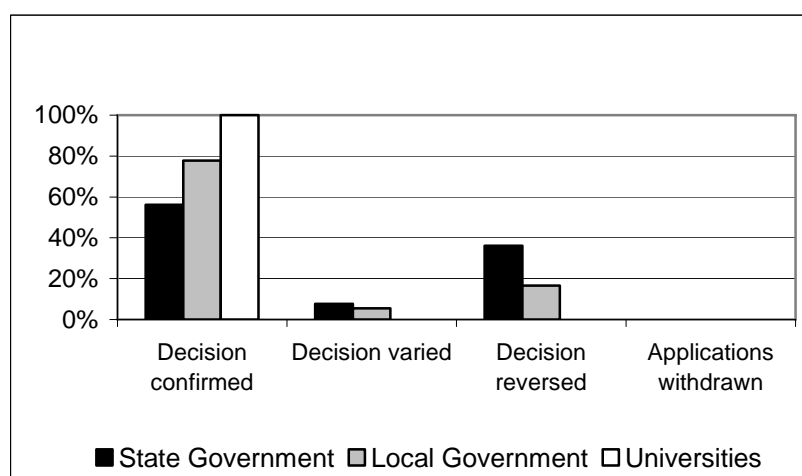
This represents a 31% decrease in internal review applications compared to the previous year. This decrease in internal review applications could be a direct result of 8490 applications being determined this reporting year, compared to 11 116 the previous year.

Of the 105 internal reviews undertaken by agencies this reporting year:

- 59 (56%) confirmed the original determination, which is 11% less than the previous year;
- eight (8%) varied the original determination, which is 20% less than the previous year; and
- 38 (36%) reversed the original determination, which is 32% more than the previous year.

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

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



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

External Review

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

For the 2005-06 reporting year, the Ombudsman's Office advised that it received 287 FOI related enquiries, 86 of which were reviews, 13 were investigations, and 188 were for advice. Of the 86 reviews, 35% of the determinations made by the agency concerned were confirmed. In 12% of cases the agency chose to revise their determination and in 33% of cases the agency concerned was directed by the Ombudsman to make a revised determination. The other 20% of reviews were either withdrawn or there was no jurisdiction for the Ombudsman to proceed with the review.

As well as undertaking reviews, the Ombudsman's office provided advice to agencies regarding 188 applications and investigated an estimated further 13 cases which did not result in a review. In 38% of the 13 cases investigated the complaint against the agency was not sustained.

The Police Complaints Authority advised that it received 20 requests for review and carried forward 18 requests from the last reporting year. Of these 38 requests, 84% were unsuccessful, 11% were successful and 5% were transferred to the Ombudsman. It is has been estimated by the Authority that the current workload in conducting reviews equates to a salary of \$7000 per annum.

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

In the event an applicant is aggrieved by the outcome of an external review the applicant may appeal to the District Court. In 2005-06, agencies reported that five appeals went before the District Court, which is three less than the previous reporting year.

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

APPENDICES

Appendix A – Objectives, Scope and Interpretations

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

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

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

Scope

The FOI Act applies to all South Australian government authorities, except where an exemption applies, all local councils and South Australian universities. This means that FOI applications can be made to all of these organisations.

Interpretations

Agency

The definition of agency is currently defined as:

- a) a Minister of the Crown; or*
- b) a person who holds an office established by an Act; or*
- (b) an administrative unit under the Public Sector Management Act 1995; or*
- (c) South Australia Police; or*
- (d) A council; or*
- (e) Any incorporated or unincorporated body –*
 - i. Established for a public purpose by an Act; or*
 - ii. Established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or*
 - iii. Established or subject to control or direction by the Governor, a Minister 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*
- (f) 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 E.

Accredited FOI Officer

The FOI Act requires 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 - Tables

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

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

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

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

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

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

Table 12 – Completed Applications - State Government

<i>Outcome of Application</i>	<i>2005-06</i>	<i>2004-05</i>
Granted In Full	6 520	9 028
Granted in Part	1 033	808
Refused	728	1 044
Deferred	1	1
<i>Total Completed applications</i>	<i>8 282</i>	<i>10 881</i>
<i>Plus</i>		
Transferred in full	167	103
Withdrawn	80	117
Total Actually Processed	8 529	11 101

Table 13 – Completed Applications - Local Government

<i>Outcome of Application</i>	<i>2005-06</i>	<i>2004-05</i>
Granted In Full	128	149
Granted in Part	49	42
Refused	25	33
Deferred	0	1
<i>Total completed applications</i>	<i>202</i>	<i>225</i>
<i>Plus</i>		
Transferred in full	2	2
Withdrawn	18	12
<i>Total Actually Processed</i>	<i>222</i>	<i>239</i>

Table 14 – Completed Applications – Universities

<i>Outcome of Application</i>	<i>2005-06</i>	<i>2004-05</i>
Granted In Full	2	9
Granted in Part	3	1
Refused	1	0
Deferred	0	0
<i>Total completed applications</i>	<i>6</i>	<i>10</i>
<i>Plus</i>		
Transferred in full	0	0
Withdrawn	0	0
<i>Total Actually Processed</i>	<i>6</i>	<i>10</i>

Table 15 – State Government Agencies Access Applications Received

<i>Agency</i>	<i>Total number of applications</i>
Aboriginal Housing Authority	0
Adelaide & Mt Lofty Ranges Natural Resource Management Board	0
Adelaide Bank Festival of Arts	0
Adelaide Cemeteries Authority	0
Adelaide Festival Centre Trust	1
Attorney-General's Department	24
Balaklava & Riverton Districts Health Service Inc	0
Barossa & Light Regional Development Board	0
Booleroo Centre District Hospital & Health Service	1
Bordertown Memorial Hospital Inc	12
Carclew Youth Arts Centre Inc	0
Ceduna District Health Service	55
Centennial Park Cemetery Authority	0
Central Northern Adelaide Health Service - Lyell McEwin Hospital	631
Central Northern Adelaide Health Service - Glenside Mental Health Service	112
Central Northern Adelaide Health Service - Primary Health Care Services (North/North East)	12
Children Youth & Women's Health Service - CYH	1
Children Youth & Women's Health Service – WCH	371
Children Youth and Family Services	216
Chiropractors Board of South Australia	0

Coober Pedy Hospital & Health Services Inc	84
Country Health SA	1
Courts Administration Authority	67
Crystal Brook Community Hospital	0
Cummins & District Memorial Hospital	1
Department for Administrative & Information Services	188
Department for Correctional Services	171
Department for Environment & Heritage	19
Department for Families and Communities	12
Department for Primary Industries & Resources SA	42
Department for Transport, Energy & Infrastructure	161
Department of Education and Children's Services	85
Department of Further Education, Employment, Science & Technology	9
Department of Health	65
Department of the Premier and Cabinet	155
Department of Trade & Economic Development	41
Department of Treasury and Finance	77
Department of Water, Land & Biodiversity Conservation	12
Drug and Alcohol Services South Australia	8
Eastern Eyre Health & Aged Care - Kimba Campus	0
Environment Protection Authority	43
Equal Opportunity Commission	3
Eudunda/Kapunda Health Service	12

Eyre Peninsula Catchment Water Management Board	0
Eyre Peninsula Natural Resources Management Board	0
Eyre Regional Health Service	1
Flinders Medical Centre	752
Gawler Health Service	60
Guardianship Board	1
Hawker Memorial Hospital Inc	1
History Trust of SA	1
Homestart Finance	0
Independent Gambling Authority	1
Inner Southern Community Health	2
Institute of Medical and Veterinary Science	4
Intellectual Disability Services Council	1
Julia Farr Services	10
Kangaroo Island Health Service	5
Karoonda Hospital - Mallee Health Service	1
Kingston Soldiers Memorial Hospital	1
Lameroo District Health Service	1
Land Management Corporation	3
Legal Services Commission	15
Leigh Creek Health Service Inc	0
Loxton Hospital Complex Inc	0
Medical Board of South Australia	6
Meningie & Districts Memorial Hospital & Health Service	3
Metropolitan Domiciliary Care	11

Mid-West Health	5
Millicent & District Hospital & Health Service Inc	17
Mount Gambier & Districts Health Service	140
Mt Barker & District Health Service	41
Multicultural SA	0
Murray Bridge Soldiers Memorial Hospital	14
Murray Mallee Community Health Service	1
Naracoorte Health Service	29
Noarlunga Health Services	158
Northern Adelaide Hills Health Service	9
Northern Yorke Peninsula Health Service	17
Nurses Board of South Australia	5
Occupational Therapists Registration Board of SA	0
Office of Consumer and Business Affairs	7
Office of Minister for Industry and Trade	11
Office of Public Employment	4
Office of the Attorney-General	0
Office of the Liquor & Gambling Commissioner	1
Office of the Minister - Hon Carmel Zollo	7
Office of the Minister - Hon Gail Gago	0
Office of the Minister - Hon John Hill	19
Office of the Minister - Hon Jane Lomax-Smith	7
Office of the Minister - Hon Jay Weatherill	11
Office of the Minister - Hon Kevin Foley	19
Office of the Minister - Hon L Stevens	6

Office of the Minister – Hon Patrick Conlon	25
Office of the Minister – Hon Paul Caica	0
Office of the Minister – Hon Michael Wright	10
Office of the Minister for Correctional Services	9
Office of the Public Advocate	4
Orroroo & District Health Service	2
Outback Areas Community Development Trust	0
Penola War Memorial Hospital Inc	2
Peterborough Soldiers Memorial Hospital & Health Service	5
Pinnaroo Soldiers Memorial Hospital	3
Podiatry (Chiropody) Board of South Australia	0
Port Augusta Hospital & Regional Health Services	39
Port Broughton District Hospital & Health Services	5
Port Lincoln Health Service	14
Port Pirie Regional Health Service	33
Pregnancy Advisory Centre	9
Queen Elizabeth Hospital	675
Renmark Paringa District Hospital Inc	12
Repatriation General Hospital	79
Riverland Regional Health Service Inc	79
Royal Adelaide Hospital	3 204
SA Ambulance Service	143
SA Dental Service	48
SA Fire and Emergency Services Commission	9
SA Lotteries	4

SA Tourism Commission	8
SA Water Corporation	15
SAICORP	1
South Australia Police Service	1 685
South Australian Community Housing Authority	3
South Australian Country Fire Service	11
South Australian Film Corporation	3
South Australian Housing Trust	49
South Australian Museum	0
South Australian Psychological Board	1
South Coast District Hospital Inc	26
South East Regional Health Service Inc	0
Southern Flinders Health	0
St Margaret's Rehabilitation Hospital	0
State Electoral Office	1
State Library of South Australia	1
State Theatre Company of SA	0
Strathalbyn & District Health Service	6
Super SA	0
Tailem Bend District Hospital	3
The Dog & Cat Management Board	0
The Physiotherapists Board of South Australia	0
TransAdelaide	12
Tumby Bay Hospital & Health Services	7
Veterinary Surgeons Board of SA	0

Waikerie Health Services Inc	0
Wakefield Health	0
West Beach Trust	0
Whyalla Hospital and Health Services Inc	48
WorkCover Corporation	196
<i>TOTAL</i>	<i>10 589</i>

Table 16 – Local Government Access Applications Received

<i>Agency</i>	<i>Total number of applications</i>
Adelaide City Council	29
Adelaide Hills Council	2
Alexandrina Council	7
Barossa Council	1
Campbelltown City Council	5
City of Burnside	31
City of Charles Sturt	41
City of Holdfast Bay	9
City of Marion	18
City of Mitcham	6
City of Mount Gambier	0
City of Norwood, Payneham & St Peters	0
City of Onkaparinga	13
City of Playford	3
City of Port Adelaide Enfield	28
City of Port Lincoln	1
City of Prospect	0
City of Salisbury	1
City of Tea Tree Gully	13
City of Unley	16
City of Victor Harbor	0

City of West Torrens	5
Clare & Gilbert Valleys Council	1
Corporation of the Town of Walkerville	10
District Council of Ceduna	0
District Council of Cleve	0
District Council of Coober Pedy	0
District Council of Franklin Harbour	0
District Council of Grant	0
District Council of Karoonda East Murray	0
District Council of Kimba	0
District Council of Kingston	1
District Council of Le Hunte	0
District Council of Lower Eyre Peninsula	0
District Council of Loxton Waikerie	0
District Council of Mallala	4
District Council of Mount Barker	5
District Council of Orroroo Carrieton	1
District Council of Peterborough	0
District Council of Southern Mallee	0
District Council of Streaky Bay	0
District Council of Tatiara	0
District Council of the Coorong	0
District Council of Tumby Bay	0
District Council of Yankalilla	0

District Council of Yorke Peninsula	0
Flinders Ranges Council	0
Kangaroo Island Council	0
Kingston District Council	0
Light Regional Council	3
Mid Murray Council	5
Naracoorte Lucindale Council	0
Port Augusta City Council	4
Port Pirie Regional Council	0
Regional Council of Goyder	1
Renmark Paringa Council	0
Roxby Downs Council	0
Rural City of Murray Bridge	1
The Berri Barmera Council	0
The District Council of Streaky Bay	0
Town of Gawler	0
Wattle Range Council	2
Whyalla City Council	2
<i>TOTAL</i>	269

Table 17 – Universities Access Applications Received

<i>Agency</i>	<i>Total number of applications</i>
Flinders University of South Australia	5
University of Adelaide	6
University of South Australia	1
<i>TOTAL</i>	<i>12</i>

Appendix C – Reasons for Refusing or Restricting Access

Application incomplete or wrongly directed

Under Section 15 of the FOI Act, an agency can not refuse to accept an application 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(1)(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 personal affairs of the applicant, or
- it is a document that is reasonably necessary to enable some other document (being a document to which the agency has given access under the FOI Act) to be understood, or
- if 20 years have passed since the end of the calendar year in which the document came into existence.

Exempt agency

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

Document does not exist or is lost

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

Appendix D – FOI Act Schedule 1 Exempt Documents

Clause 1 - Cabinet documents

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

Clause 1 was amended by the *Freedom of Information (Miscellaneous) Amendment Act 2004* with the inclusion of sub-section (2a) which allows for Cabinet documents as described above, to be released under FOI where a Minister has certified that Cabinet have approved the document as a document to which access may be given under FOI. This amendment came into force on 1 January 2005.

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 2 was amended by the *Freedom of Information (Miscellaneous) Amendment Act 2004* with the inclusion of sub-section (3) which allows for Executive Council documents as described above, to be released under FOI where a Minister has certified that Executive Council have approved the document as a document to which access may be given under FOI. This amendment came into force on 1 January 2005.

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 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 6 was amended by the *Freedom of Information (Miscellaneous) Amendment Act 2004* to state that a document is exempt where it would be unreasonable to disclose because it contains personal affairs of a person, no matter how old the document is. This amendment came into force on 1 January 2005.

Clause 7 - Documents affecting business affairs

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

Clause 7 was amended by the *Freedom of Information (Miscellaneous) Amendment Act 2004* with the inclusion of sub-section (3) which states that a document is not exempt by virtue of this clause if it is a contract entered into by the Crown or an agency. This amendment came into force on 1 January 2005.

Clause 8 - Documents affecting the conduct of research

Documents relating to the purpose or results of research (including research that has yet to be commenced or completed) and which, if disclosed, could be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being carried out.

Clause 9 - Internal working documents

Documents containing any opinion, advice or recommendation that has been obtained, prepared or recorded; or any deliberation that has taken place in the course of the decision-making functions of the Government, a Minister or an agency.

Clause 10 - Documents subject to legal professional privilege

Documents containing matter privileged from production in legal proceedings on the grounds of legal professional privilege.

Clause 11 - Documents relating to judicial functions, et cetera

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

Clause 12 - Documents the subject of secrecy provisions

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

Clause 13 - Documents containing confidential material

Documents which, if disclosed, would found an action for breach of confidence. This also refers to information that is obtained in confidence and which, if disclosed, would be expected to prejudice the future supply of such information to the Government or to an agency, and would be contrary to the public interest.

Clause 13 was amended by the *Freedom of Information (Miscellaneous) Amendment Act 2004* with the inclusion of sub-sections (2) to (7) which state that a contract entered into by the Crown or an agency is not exempt by virtue of this clause unless a confidentiality clause or term is included in the contract and is approved by a Minister, or a Minister's delegate, or in the case of Local Government and Universities, the agency itself. This amendment came into force on 1 January 2005.

Clause 14 - Documents affecting the economy of the State

Documents which, if disclosed, would be expected to have a substantial adverse effect on the ability of the Government or an agency to manage the economy, and would be contrary to the public interest.

Clause 15 - Documents affecting financial or property interests

Documents which, if disclosed, would be expected to have a substantial adverse effect on the financial or property interests of the State or an agency, and would be contrary to the public interest.

Clause 16 - Documents concerning operations of agencies

Documents that, if disclosed, could be expected to prejudice the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency and would be contrary to the public interest; or containing matter that, if disclosed, could prejudice the competitiveness of an agency engaged in competitive activities.

Clause 17 - Documents subject to contempt, et cetera

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

Clause 18 - Documents arising out of companies and securities legislation

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

Clause 19 - Private documents in public library or archival collections

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

Appendix E – Exempt Agencies – State Government

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

* * * * *

- e) all Royal Commissions;
- f) the Motor Accident Commission in respect of any matter relating to a claim or action under Part 4 of the *Motor Vehicles Act 1959*;
- g) the Essential Services Commission in relation to –
 - (i) information gained under Part 5 of the Independent Industry Regulator Act 1999 that would, if it were gained under Part 5 of the Essential Service Commission Act 2002, be capable of being classified by the Commission as being confidential under section 30(1) of that Act; and
 - (ii) information gained under Part 5 of the Essential Service Commission Act 2002 that if classified by the Commission as being confidential under section 30(1) of that Act;
- h) the Auditor-General;
- i) the Attorney-General, in respect of functions related to the enforcement of the criminal law;
- j) the Parole Board;
- k) the Solicitor-General, the Crown Solicitor and the Director of Public Prosecutions;
- l) the Ombudsman and the Police Complaints Authority;
- m) the Public Trustee, in respect of functions exercised as executor, administrator or trustee;
- n) the South Australian Government Financing Authority, the Local Government Financing Authority and the South Australian Superannuation Fund Investment Trust;
- o) a Minister of the Crown in respect of the administration of the former South Australian Development Fund or the Industry Investment Attraction Fund (or a fund substituted for the Industry Investment Attraction Fund);
- p) South Australia Police in relation to information compiled by—
 - (i) the former Special Branch; or
 - (ii) the Operations Planning and Intelligence Unit; or

- (iii) the Operations Intelligence Section (or a body substituted for the Operations Intelligence Section); or
 - (iv) the Anti-Corruption Branch (or a body substituted for the Anti-Corruption Branch);
- q) the Local Government Association.

The following is a list of 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*;
- (c) each State-owned company within the meaning of the *Electricity Corporations (Restructuring and Disposal) Act 1999* that holds a licence under the *Electricity Act 1996*;
- (d) The commission of inquiry established under the *Commission of Inquiry (Children in State Care) Act 2004*; and
- (e) Each agency established by or under the *Health and Community Services Complaints Act 2004*.