

Freedom of Information Act 1991



ANNUAL REPORT
YEAR
ENDED
JUNE
2009

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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 Jay Weatherill MP



Government
of South Australia

MINUTE

MINUTES *forming* ENCLOSURE to

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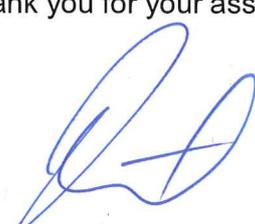
Minister for Environment
and Conservation
Minister for Early
Childhood Development
Minister for Aboriginal
Affairs and Reconciliation
Minister Assisting the
Premier in Cabinet
Business and Public Sector
Management

TO Hon Mike Rann MP
Premier

RE **Tabling of Annual Report in Parliament – *Freedom of Information Act 1991***

Pursuant to Section 54 of the *Freedom of Information Act 1991*, I enclose three copies of the 2008-09 Annual Report on the Administration of the *Freedom of Information Act 1991* for tabling in both Houses of Parliament, no later than 3 December 2009.

Thank you for your assistance.



Hon Jay Weatherill MP
**MINISTER ASSISTING THE PREMIER
IN CABINET BUSINESS AND PUBLIC SECTOR MANAGEMENT**

9 / 11 / 2009

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1 Minister's Foreword

In recent years, South Australia has been a leader in Freedom of Information (FOI) reform. In 2004, the Government made significant amendments to the *Freedom of Information Act 1991* (the FOI Act) many of which are now starting to be adopted by other jurisdictions. This includes a clear statement in the FOI Act of a presumption of disclosure of information over non-disclosure, the abolishment of ministerial certificates and a review of fees and charges.

This year agencies received 11 524 applications for access to information held across the three sectors of government; State Government, Local Government and Universities. State Government agencies reported processing 78% of applications within the time limit, which was the same as the previous year.

The total cost to government for the administration of FOI for 2008-09 was estimated to be \$5.3 million, which was a 13% increase from the previous year. This cost includes time spent processing applications, internal and external reviews, training, activities relating to reporting and seeking legal advice. Only direct costs associated with processing applications can be recovered through regulated fees and charges. Agencies reported recovering \$127 557 or two percent of the total reported cost through fees and charges.

This increase in cost can be attributed mainly to a nine percent increase in the number of staff involved compared with the previous year, and an increase in the classification levels of FOI staff. In 2008-09, there was a 56% increase in the number of FOI staff at senior levels in the major State Government departments. This increase is likely to be a result of the effort made by State Records during the last two years to raise awareness of the intent of the FOI legislation where an Accredited FOI Officer must be in an executive level position or in a senior position that reports to an executive.

The number of applications made by Members of Parliament (MPs) has doubled over the last 2 years from 598 to 1292. Over the same period there has been a 69% decrease in applications from the media. Applications from MPs and the media, which represent 13% of all applications received, are often more complex and seek access to large volumes of documents.

Outside of the reporting year, the Government introduced a new policy from 1 October 2009 requiring agencies to free up access to Cabinet documents created 10 years ago through the FOI process. This policy is known as the 'ten year rule' and supports the Government's commitment to improving the transparency of government decision-making and engaging citizens more in policy development.

The 'ten year rule' policy means that members of the public can apply under the FOI Act for access to Cabinet documents created ten years ago with the knowledge that their applications will be considered in the light of the Government's clear direction to provide greater access to those documents.

To better equip FOI Officers in the important role they perform in Government, there will be a greater emphasis on training for Accredited FOI Officers with the final development and roll-out of a new training program for Accredited FOI Officers during the 2009-10 financial year.

State Records provides support on the administration of the FOI Act including a telephone and email support service to the public and agencies. I am fully appreciative of the support provided by State Records and wish to thank all FOI Officers across government. Their contribution to making more information available assists in the effective participation by the public in the processes of government and promotes openness and accountability in government.

The Hon Jay Weatherill MP

**MINISTER ASSISTING THE PREMIER
IN CABINET BUSINESS AND PUBLIC SECTOR MANAGEMENT**

2 Freedom of Information in South Australia

2.1 What is the Freedom of Information Act?

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

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

2.2 Administration of the FOI Act

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

This support includes policy and legislative advice in relation to the operation of the FOI Act, the development of information sheets and guides, regular and ad hoc reporting to the Minister, management of the Freedom of Information Management System (FOIMS), and responding to enquiries from members of the public and agencies in relation to FOI. State Records' reporting responsibilities include the preparation of the FOI Annual Report on the Minister's behalf.

In order to produce the FOI Annual Report, all agencies subject to the FOI Act are required to make available to State Records statistical information relating to their processing of FOI applications. Statistics collected include the number and type of FOI applications made to agencies and the outcome of those applications.

Pursuant to Section 54AA of the FOI Act, all reporting requirements were gazetted on 15 June 2006. These requirements were unchanged in 2008-09.

2.3 Agencies subject to the FOI Act

Section 4 of the FOI Act defines those agencies that are subject to the Act. The definition of 'agency' is inclusive of State Government agencies, statutory authorities, Local Government authorities (ie Municipal and District Councils) and the South Australian Universities (public).

Schedule 2 of the FOI Act and the *Freedom of Information (Exempt Agency) Regulations 2008* (FOI Exempt Agency Regulations) prescribes those agencies that are exempt from the FOI Act (refer to Appendix F).

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

3 The Year In Review

3.1 Amendment to the FOI Act

3.1.1 *Senior Secondary Assessment Board of South Australia*

The legislation establishing the Senior Secondary Assessment Board of South Australia (SSABSA) was the *Senior Secondary Assessment Board of South Australia Act 1983*. On 1 July 2008 this legislation was amended by the *SACE Board of South Australia Act 1983*. From this date SSABSA became known as the SACE Board of South Australia.

South Australian Certificate of Education (SACE) is an independent statutory authority that provides curriculum, assessment, reporting and certification services to all members of the three school sectors: Catholic, Independent and State.

The SACE Board of South Australia is currently declared to be an exempt agency under the FOI Exempt Agency Regulations.

In 2007, the Government's Education and Care Legislation Reform program suggested that the removal of the exemption would be in line with the Government's policy of accountability and transparency. However, it was recognised that comparative student achievement data should remain confidential in order to prevent inappropriate use. While the Government supported the removal of the blanket exemption, it was declared that SACE would retain its blanket exemption until the new Board was established.

The SACE Board has advised that over the next 12 months the new Board will consider the blanket exemption in line with the Government's policy of accountability and transparency.

3.1.2 *Serious and Organised Crime (Control) Act 2008*

The *Serious and Organised Crime (Control) Act 2008* (Serious and Organised Crime (Control) Act) commenced operation on 4 September 2008. This Act made related amendments to the FOI Act.

The Serious and Organised Crime (Control) Act includes a number of provisions relating to the protection of information classified as criminal intelligence. The result of these provisions is that information classified as criminal intelligence by the Commissioner of Police (the Commissioner) may not be disclosed to any person, except to a person conducting a review under Part 6 of the Serious and Organised Crime (Control) Act or to a person to whom the Commissioner authorises its disclosure.

To support the protection of this kind of information the Serious and Organised Crime (Control) Act amended Clause 4 of Schedule 1 of the FOI Act by inserting a new sub-clause stating that a "...document is an exempt document if it has been created by South Australia Police and contains information classified by the Commissioner of Police, in accordance with the provisions of any other Act, as criminal intelligence." The insertion of this sub-clause makes it clear that information classified as criminal intelligence by the Commissioner can be protected from disclosure under the FOI Act.

3.2 Reporting

State Records derives annual FOI statistics from the Freedom of Information Management System (FOIMS) to enable this Annual Report to be produced.

FOIMS is a secure web-based system that has been designed to enable consistent recording, processing and reporting of FOI applications by all agencies subject to the FOI Act. It also provides an efficient system for agencies to manage their own reporting obligations.

In addition to annual reporting responsibilities State Records provides the Minister responsible for the administration of the FOI Act with regular reports on non-personal FOI

applications received by the major State Government portfolio agencies. These reports are also compiled from the information recorded by agencies in FOIMS.

During the year the distribution of Ministerial portfolios changed twice which resulted in an audit and update of the agency hierarchy within FOIMS. FOIMS was also updated to improve data entry capabilities, reporting and user friendliness.

3.2.1 Statistical data in this report

Statistical reports were run against the FOIMS database over the week ending 16 August 2009. The figures used in this report were accurate at that time. After this date, any additional data recorded or any amendments made to the data in FOIMS, affecting the applications that were received during 2008-09, will not be reflected in this report.

3.2.2 Additional Reporting Responsibilities

Contracts with Approved Confidentiality Clauses

The FOI Act includes a requirement to report annually the number of contracts containing approved confidentiality clauses (refer to Appendix E for a description of Clause 13).

For the 2008-09 reporting year, agencies subject to the FOI Act reported 63 contracts containing an approved confidentiality clause. This was an increase of 28 from the previous year. Of the 63 contracts reported:

- State Government agencies reported entering into 10 contracts – increase of 6.
- Local Government authorities reported entering into 37 contracts – increase of 24.
- Universities reported entering into 16 contracts – decrease of 2.

Cost of administering the FOI Act in agencies

In addition to the statistical data derived from FOIMS, State Records seeks further information in relation to FOI resourcing and other costs associated with FOI from agencies.

Agencies are required to provide information on:

- The number of staff dealing with FOI in their agency and their salary ranges.
- The percentage of time staff spend dealing with FOI applications.
- The total staffing costs.
- Any other costs the agency incurs in dealing with FOI applications, including training and legal costs.

The purpose of seeking this kind of information is to quantify the total costs associated with the administration of the FOI Act incurred by all agencies subject to the Act.

Agencies across all three sectors reported there were 592 staff involved in processing FOI applications. Seventy nine percent of whom were employed by State Government agencies.

Since 2007-08, there has been a nine percent increase in the number of staff involved in processing FOI applications across all sectors. Agencies reported that, in the senior salary ranges, 81 more staff were involved in processing FOI applications than the previous year. The number of staff involved in processing FOI applications in the most senior salary range has increased by 95 staff or 62% over the last two years.

3.2.3 *Agencies Failing to Report*

As previously mentioned agencies use FOIMS for the management and reporting of their FOI applications.

Agencies that are subject to the FOI Act that are not registered in FOIMS could be determined to have failed to report, but it is difficult to identify such agencies. Periodic reviews of portfolio structures help in identifying unregistered agencies, at which time they are added to the system. With the ongoing administrative changes in government, new agencies continue to be formed and registered on FOIMS.

3.3 Advice, Publication & Training

3.3.1 *Advice*

State Records provides an advice service for members of the public seeking to access documents held by agencies subject to the FOI Act. State Records also provides advice to agencies in relation to the operation and administration of the FOI Act. During 2008-09, State Records responded to 651 telephone and 202 email requests directly related to FOI from members of the public and agencies.

State Records also provides a telephone and email support service and assistance to agencies on the use of FOIMS. During 2008-09, State Records responded to 217 telephone and 193 email enquiries from agencies regarding FOIMS.

In total, State Records responded to 1263 FOI related enquires, which is 5% more than the previous reporting year.

Overall, there was a 10% increase in the number of FOI and FOIMS enquiries received from agencies and a 12% decrease in the number of FOI enquiries received from members of the public

3.3.2 *Publications*

State Records produces FOI process guides and information sheets to provide guidance and advice for FOI Officers when processing FOI applications. During 2008-09, five information sheets were updated to improve the quality of general advice provided to agencies and to reflect any regulatory changes.

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>.

3.3.3 *FOI courses delivered during 2008-09*

During the reporting year State Records offered and delivered 39 FOI training courses that were attended by 571 participants.

Table 1 below shows the number of courses of each type delivered and the total number of attendees for each course over the year.

Table 1 – FOI courses delivered during 2008-09

Course Name	No. of Courses	No. of Attendees
Training for Designated FOI Officers ¹	10	186
Key Exemptions In Practice	2	40
FOI & Personal Information	2	37
Processing FOI with Confidence	1	19
FOI & the Public Interest	2	40
Introduction to FOIMS	7	51
FOIMS Refresher	1	6
FOI General Awareness	3	45
Specialised FOI General Awareness ²	11	147
Total	39	571

State Records also offers on-line FOI awareness education. Its purpose is to complement the other classroom style FOI sessions by providing easily accessible broad based training designed to raise awareness of FOI for all staff. The training is delivered in an on-line environment, is self-paced and has the added benefit of being accessible to staff in regional and remote areas. During 2008-09 there were 141 enrolments in the on-line FOI awareness training.

3.3.4 Development of the FOI Training Strategy for 2009-10

During 2008-09, State Records began the development of a Freedom of Information Training Strategy that involved the review of current FOI training and the development and delivery of new training courses.

The aim of the Training Strategy is to improve the skills and knowledge of those involved in FOI. Its initial focus is the development of a more comprehensive course for FOI Officers seeking to become accredited under the FOI Act.

The new course is being developed by State Records in consultation with the State Ombudsman, the Police Complaints Authority and the Crown Solicitor's Office. The course will extend over two and a half days and will consist of four modules. Participants will be required to attend and complete all modules before they can be designated as an Accredited FOI Officer.

This new training course is planned to commence in late 2009.

3.4 Documents provided outside of the FOI Act

The objects of the FOI Act make it clear that the legislation is not intended to prevent access to documents or amendment of personal records outside of FOI. Access outside of FOI is usually provided through inspection, purchase or free of charge.

During the reporting year there were 130 reported instances where agencies refused an FOI application and provided access in full or in part outside of FOI. This represents 44 more instances than reported in the previous year, being a 51% increase.

¹ Training sessions for Designated FOI Officers were delivered by the Australian Government Solicitor's Office on behalf of State Records.

² Specialised FOI General Awareness sessions were organised for individual agencies on request. The content of the training was negotiated with the agency to meet their particular requirements. Each session is usually one and a half hours duration.

A description of the types of documents that may be made available can be found in an agency's Information Statement. Agency's are required to publish Information Statements either on their agency's website or in their Annual Report. .

3.5 Data inconsistency

Analysis of the data entered by agencies in FOIMS during 2008-09 has shown that there are anomalies in the entry of data. Specifically, some agencies have wrongly classified some applications in terms of the applicant type while some are using FOIMS to manage non-FOI related requests for access to information. It is likely that these errors have been occurring over a number of years and while undesirable, the comparative data contained in this and previous reports can be reasonably relied upon.

Statistical Summary

4.1 All Sectors

This year 11 524 FOI applications for access were received by all agencies subject to the FOI Act.

In addition, 854 unfinished FOI applications for access were brought forward from 2007-08.

Therefore, during 2008-09, there were 12 378 FOI applications for access to be processed by all agencies subject to the FOI Act.

Determinations were issued for 11 257, and a further 306 were either transferred to another agency or withdrawn by the applicant.

Of the 11 257 applications determined during 2008-09, 89% were granted in full or in part.

Table 2 below shows the percentages of applications granted in full, granted in part or refused in comparison to 2007-08 for each sector.

Table 2 – Outcome of Access Applications - All Sectors

Sector	Granted in Full		Granted in Part		Refused	
	08-09	07-08	08-09	07-08	08-09	07-08
State Government	73%	75%	17%	16%	10%	9%
Local Government	68%	61%	24%	26%	8%	14%
Universities	33%	45%	45%	36%	22%	18%
Total	72%	75%	17%	16%	11%	9%

4.2 State Government

Since the commencement of the FOI Act on 1 January 1992, there have been 134 845 applications for access made to South Australian State Government agencies.

This year 11 147 FOI applications for access were received by State Government agencies.

In addition 832 unfinished FOI applications for access were brought forward from 2007-08.

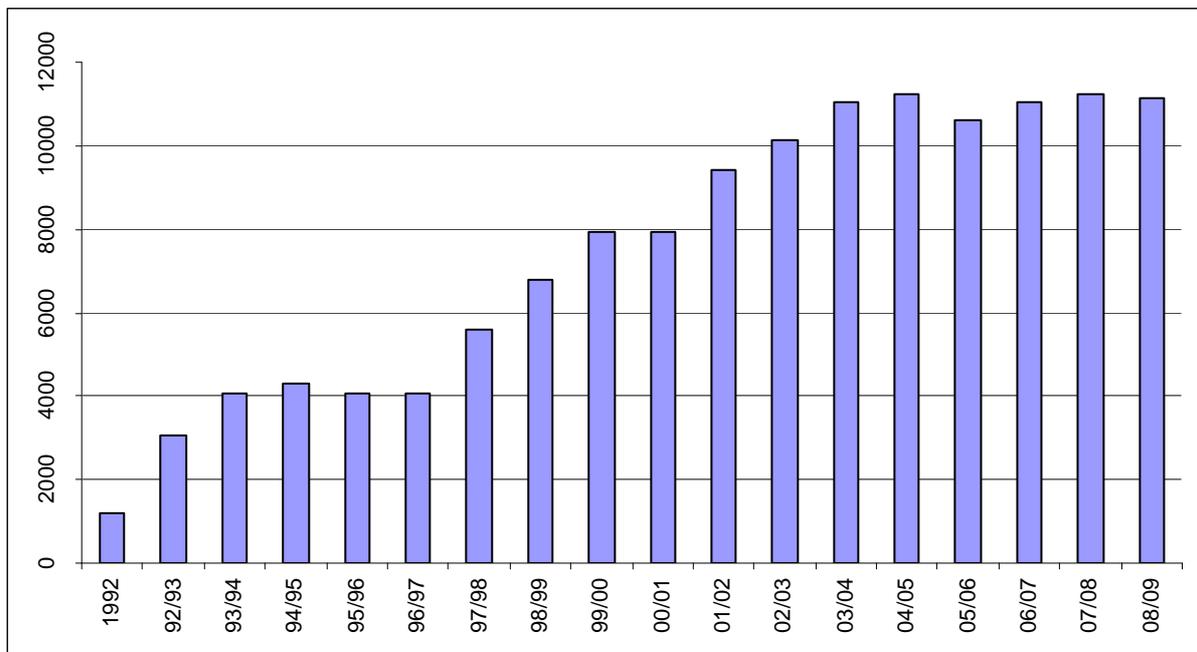
Therefore, during 2008-09, there were 11 979 FOI applications for access to be processed by State Government agencies.

Determinations were issued for 10 894 applications, and a further 286 were either transferred to another agency or withdrawn by the applicant.

Of the 10 894 applications determined during the reporting year, 90% were granted in full or in part.

Chart 1 below shows the number of applications for access made each year to State Government agencies since the commencement of the FOI Act on 1 January 1992.

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



4.3 Local Government

Amendments to the FOI Act that commenced operation on 1 July 2002 resulted in Part VA of the *Local Government Act 1934* being repealed.³ As a result of these amendments Local Government authorities have been subject to the FOI Act since 1 July 2002.

Since 1 July 2002, there have been a total of 1 908 applications for access made to Local Government authorities.

This year 356 FOI applications for access were received by Local Government authorities.

In addition, 21 unfinished FOI applications were brought forward from 2007-08.

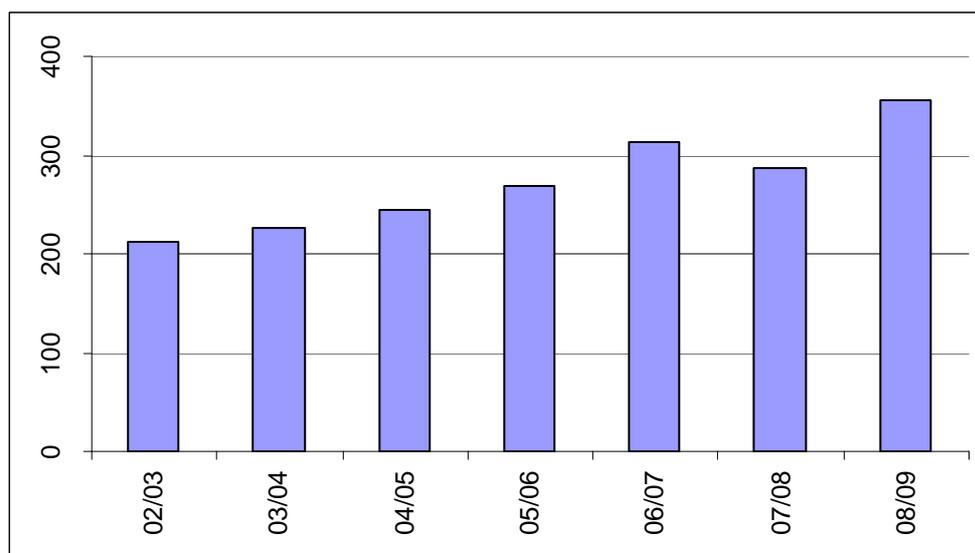
Therefore, during 2008-09, there were 377 FOI applications for access to be processed by Local Government.

Determinations were issued for 345 applications, and a further 17 were either transferred to another agency or withdrawn by the applicant.

Of the 345 applications determined during 2008-09, 92% were granted in full or in part.

Chart 2 below shows the number of applications for access made each year to Local Government authorities since 1 July 2002.

Chart 2 – Applications made to Local Government authorities each year since 1 July 2002



³ Part VA of the *Local Government Act 1934* contained similar, but not identical, provisions to those found in the FOI Act.

4.4 Universities

The *Freedom of Information (General) Regulations 2002* prescribed the three South Australian Universities to be included as agencies under the definition of State Government agency in the FOI Act. These Regulations commenced on 11 July 2002.

Since that time, there have been a total of 99 applications for access made to Universities in South Australia.

This reporting year, 21 FOI applications for access were received by Universities.

In addition there was one unfinished FOI applications brought forward from 2007-08.

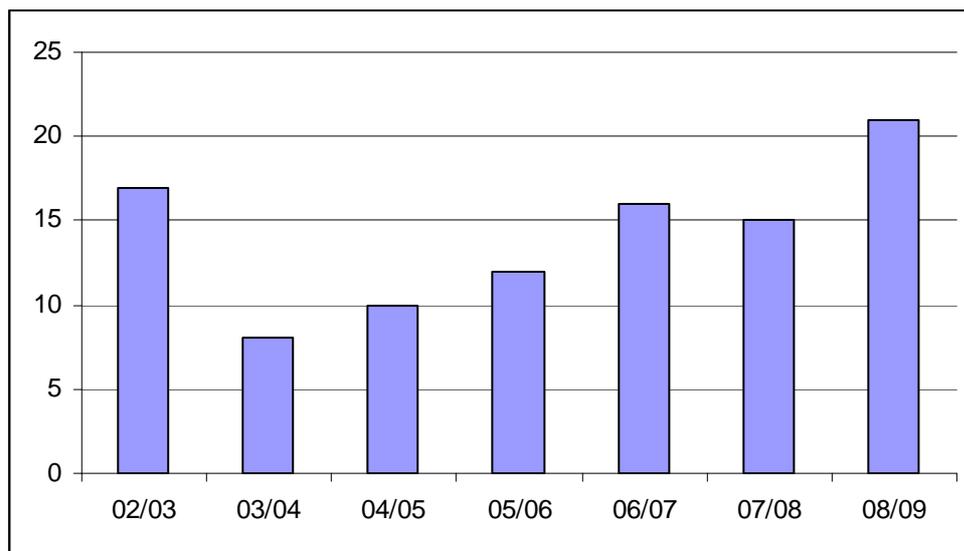
Therefore, during 2008-09, there were 22 FOI applications for access to be processed by South Australian Universities.

Determinations were issued for 18 applications, and a further three applications were either transferred to another agency or withdrawn by the applicant.

Of the 18 applications determined during 2008-09, 76% were granted in full or in part.

Chart 3 below shows the number of applications for access made each year to South Australian Universities since 1 July 2002.

Chart 3 – Applications made to South Australian Universities since 1 July 2002



5 Activity under the FOI Act

5.1 Volume of access applications

As previously reported there were 11 524 applications for access made during 2008-09. This is five less than the number of applications received during 2007-08.

During the reporting year, 30% of all agencies subject to the FOI Act did not receive any FOI applications. By sector, 26% of State Government agencies and 44% of Local Government authorities reported receiving no FOI applications. Each of the Universities received at least five FOI applications during the year.

5.1.1 Top Five Agencies

Since 1999-2000, the top five agencies in terms of volume of access applications received during the year have been reported in the table below.

The following table shows the volume of applications received and the percentage increase or decrease.

This year the top five agencies have remained the same as reported in 2007-08, however, the ranking of these agencies has changed. The Lyell McEwin Hospital received 38% less applications and dropped from third to fifth place.

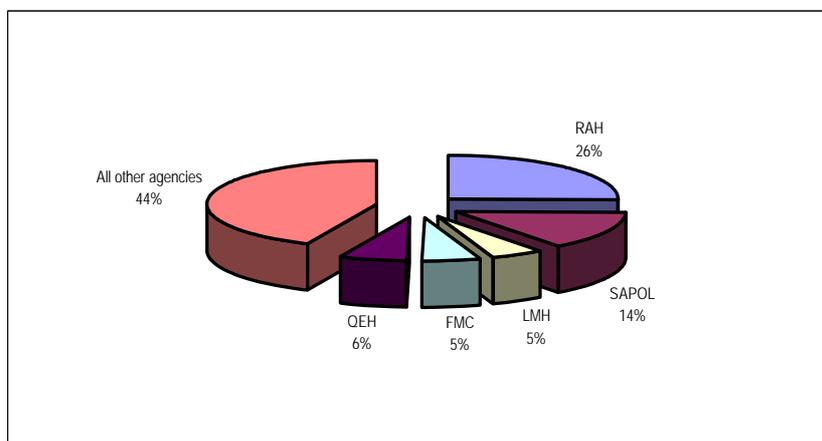
Table 3 – Top Five Agencies

Agency	2008/09	2007/08	% Change
Royal Adelaide Hospital	2899	3124	(7%)
South Australia Police (SAPOL)	1666	1531	9%
Queen Elizabeth Hospital	749	729	3%
Flinders Medical Centre	623	671	(7%)
Lyell McEwin Hospital	598	966	(38%)
Total	6535	7021	(7%)

While these five agencies represent only three percent of all the total number of State Government agencies they received 56% of the applications by the State Government sector.

Chart 4 shows the percentage of applications received by these five agencies in comparison to all other State Government agencies.

Chart 4 – Top five agencies compared to all other agencies



5.2 Category of Application

When recording access applications in FOIMS, agencies are asked to distinguish between applications that relate to personal information and those that relate to information of a non-personal nature.

Applications relating to personal affairs can include:

- Applicants seeking access to their own personal information.
- Parents seeking access to their child's information.
- Requests from people for access to another person's personal information on their behalf.
- 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 that relate to information of a non-personal nature include:

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

Table 4 shows the number of applications made for access for personal and non-personal information across all sectors during 2008-09.

Table 4 – Category of application by Sector

Application type	State	Local	Unis	Total
Personal	6 605	75	8	6 688
Non-Personal	4 542	281	13	4 836
Total	11 147	356	21	11 524

5.3 Types of applicant

One of the types of information sought from agencies when they record an application for access is the type of applicant that is making the request. Applicants are categorised into four different types. Applications can only have one type of applicant assigned. The types of applicant are as follows:

- Member of Parliament
- Media
- Lawyers / Agents
- Public & Other

Applications received during 2008-09

Table 5 shows the percentage of applications made by each applicant type for each sector.

Table 5 – Percentage of applications received during 2008-09 by applicant type for each sector

Applicant type	All sectors	State Govt	Local Govt	Unis
Member of Parliament	12%	12%	3%	40% ⁴
Media	1%	1%	2%	0%
Lawyer / Agent	38%	39%	10%	10%
Public & Other	49%	48%	85%	50%

Agencies across all three sectors reported that during the year:

- Members of Parliament made a total 1292 applications. Of these, 1272 were made to State Government agencies, which represents a 33% increase compared to the previous reporting year.
- The Media made a total of 81 applications. Of these, 75 were made to State Government agencies, which represents a 48% decrease compared to the previous reporting year, and 69% decrease in since 2006-07.

Table 6 shows the breakdown for category of application by applicant type.

Table 6 – Application category for applicant types

Applicant type	Member of Parliament	Media	Lawyer / Agent	Public / Other
Personal	7%	33%	55%	71%
Non Personal	93%	67%	45%	29%

5.4 Across Government Applications

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

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

The kinds of documents sought during the year included mobile phone usage, file schedules, advertising expenditure, corporate box usage and remuneration amounts for Board members.

These kinds of applications are usually made by Members of Parliament and the media, however any member of the public can also make an across government application.

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

During 2008-09, agencies reported receiving nine across government applications, eight of which were received from Members of Parliament and one was from a member of the public.

⁴ While table 5 shows that 40% of all applications made to Universities were from Members of Parliament, however, this 40% represents only 8 applications for access.

5.5 Total to be processed

The total number of applications to be processed is calculated by adding the number of access applications received during 2008-09 to the number of applications brought forward from 2007-08. The breakdown for each sector is shown in the Table 7 below.

Table 7 – Total applications to be processed by sector

Sector	Access applications	Brought forward	Total to be processed
State Government	11 147	832	11 979
Local Government	356	21	377
Universities	21	1	22
Total	11 524	854	12 378

Table 8 separates the total number of applications to be processed into personal and non-personal affairs. It shows that 7320 applications or 59% of all applications were for access to documents relating to personal affairs.

However, this percentage is not representative of each sector. While the majority of applications made to State Government agencies were for access to documents relating to personal affairs, the majority of applications made to Local Government authorities were for documents relating to non-personal affairs.

Table 8 – Total applications to be processed by sector (personal & non-personal)

Sector	Personal Affairs	Non-Personal Affairs	Total to be processed
State Government	7236	4743	11 979
Local Government	76	301	377
Universities	8	14	22
Total	7320	5058	12 378

5.6 Outcomes of access applications

5.6.1 Determined and processed

During the reporting year there were a total of 12 378 applications to be processed across all sectors. This included applications received and those brought forward from 2007-08.

Of the total number of applications to be processed, agencies recorded determining 11 257 applications. A further 306 applications were either transferred to another agency or withdrawn by the applicant.

When an application for access is determined agencies are able to fully release a document, partially release a document or refuse access to a document. Table 9 below shows the outcome for all access applications determined by sector and whether the application was for documents concerning personal or non-personal affairs. The table also shows that in all sectors a higher percentage of applications for non-personal affairs are fully released.

Table 9 - Outcomes of application by sector

Sector	Personal / Non Personal	Full Release	Partial Release	Refused
All Sectors	Personal	68%	21%	11%
	Non Personal	78%	12%	10%
	All applications	72%	17%	11%
State Govt	Personal	68%	21%	11%
	Non Personal	79%	11%	10%
	All applications	73%	17%	10%
Local Govt	Personal	62%	32%	6%
	Non Personal	70%	22%	8%
	All applications	68%	24%	8%
Universities	Personal	33%	33%	27%
	Non Personal	36%	36%	28%
	All applications	35%	41%	24%

5.6.2 Reasons for refusal or restriction

The FOI Act allows an agency to refuse or provide partial access to documents. An agency can refuse access because it has determined that the document is exempt in accordance with Schedule 1 of the FOI Act (Exempt documents) or access can be refused for other reasons such as the fees not being paid.

Table 10 shows the reasons given by agencies across all sectors for refusing access to documents.

Table 10 – Reasons for refusing access by sector

Details	State	Local	Unis	Total
Application incomplete/wrongly directed	23	2	1	26
Unreasonable diversion of an agency's resources (section 18(1))	25	1	0	26
Abuse of right of access (Section 18(2)(a))	3	0	0	3
Fees not paid	29	1	0	30
Deemed refusal - over 30 days to respond (section 19(2))	111	0	0	111
Exempt document	2213	68	10	2291
Otherwise available (section 20(1)(b), (c) & (d))	114	14	0	128
Documents created prior to 1 January 1987 (section 20(1)(e))	0	0	0	0
Exempt agency	33	0	0	33
Document does not exist/lost	419	20	0	439
Total	2970	106	11	3087

Table 11 below shows the reasons agencies, across the three sectors, used for refusing an application relating to documents concerning either personal or non-personal affairs.

Table 11 – Reasons for refusing access by category of application

Details	Personal	Non-personal	Total
Application incomplete/wrongly directed	14	12	26
Unreasonable diversion of an agency's resources (section 18(1))	14	12	26
Abuse of right of access (Section 18(2)(a))	2	1	3
Fees not paid	12	18	30
Deemed refusal - over 30 days to respond (section 19(2))	93	18	111
Exempt document	1708	583	2291
Otherwise available (section 20(1)(b), (c) & (d))	82	46	128
Documents created prior to 1 January 1987 (section 20(1)(e))	0	0	0
Exempt agency	17	16	33
Document does not exist/lost	165	274	439
Total	2107	980	3087

Exemptions

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

Clause 6 of Schedule 1 of the FOI Act deals with access to documents affecting personal affairs. Consistently, each reporting year agencies refuse access to documents affecting personal affairs most frequently. While clause 6 is by far the most used exemption, during 2008-09 its use decreased by 5% compared to 2007-08.

Overall, however, there has been a 7% increase in the use of an exemption to refuse access to all or part of a document.

The most significant increases were in relation to the following clauses:

- Clause 7, business affairs 43%
- Clause 12, secrecy provisions 48%
- Clause 16, operations of agencies 109%
- Clause 17, subject to contempt 125%

The most significant decrease was in relation to clause 11, 'documents relating to judicial functions', the use of which decreased by 35%.

Table 12 shows the number of times each exemption was used to refuse access to all or part of a document.

Table 12 – Number of exemptions applied across all sectors

Clause	Details	State	Local	Unis
1 & 2	Cabinet and/or Executive Council	137	0	0
3	Exempt documents communicated by another govt.	3	0	0
4	Law enforcement and public safety	876	2	0
5	Intergovernmental / Local Government relations	14	1	0
6	Personal affairs	1386	34	3
6a	Exempt electoral records	2	0	0
7	Business affairs	157	11	3
8	Conduct of research	7	0	0
9	Internal working documents	321	7	2
10	Legal professional privilege	55	11	0
11	Judicial functions	62	0	0
12	Secrecy provisions	189	7	0
13	Confidential information	113	3	4
14 & 15	Economy / financial or property interests	4	2	0
16	Operations of agencies	233	1	1
17	Subject to contempt	36	0	0
18	Companies and Securities	0	0	0
19	Public or archival collections	0	0	0
Total		3595	79	13

5.7 Time Taken & Extensions

5.7.1 Response Times

Agencies are to deal with applications made under the FOI Act as soon as practicable and within 30 calendar days. If the agency takes longer than 30 days to process an application without seeking a formal extension in accordance with section 14A, the agency is taken to have refused access to the document being sought. This is referred to as a deemed refusal. However, agencies are not prevented from making a valid determination to give access to a document if 30 days have passed.

Applications determined on time includes all applications processed within 30 days and those application extended, either formally or informally, and determined within that extended timeframe.

Overall 78% of applications were determined on time.

Of the 22% not determined on time, three percent were extended but not determined within the extension period.

Of the overdue applications, 52% were determined within a month of the due date, 72% within two months and 82% within three months.

Table 13 shows response times for those applications determined within 30 days by sector. It shows that across all three sectors, 73% of applications processed within 30 days were processed in the first 15 days. This was 6% more than last year.

Table 13 – Response times by sector – within 30 days

Time	State Govt	Local Govt	Unis	Overall
0-15 days	74%	52%	13%	73%
16-30 days	26%	48%	87%	27%

5.7.2 Extensions

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

- a large number of documents that requires searching through a large quantity of information and to do so would unreasonably divert the agency’s resources; or
- a document in relation to which consultation is required that can not be reasonably done within the 30 days.

The FOI Act does not prescribe a specific time period for extensions under section 14A. The agency is required to make a decision on a reasonable period of time having regard to the circumstances.

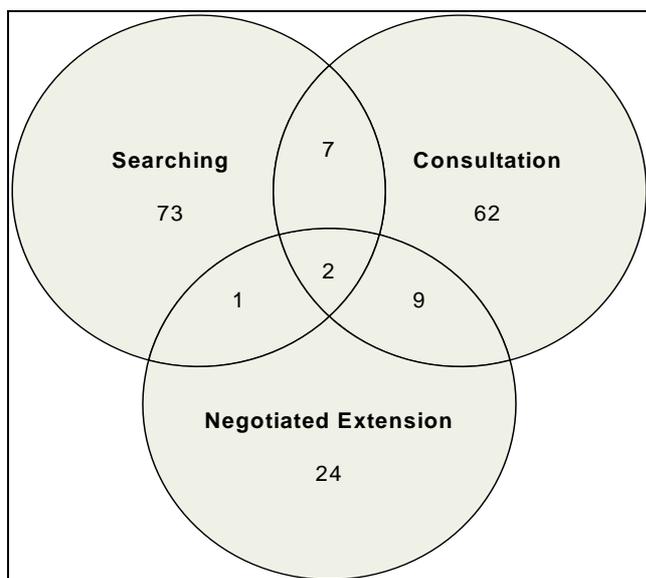
A notice of extension is a determination under the FOI Act and can only be made by the principal officer of an agency. Therefore, while the applicant does not have a right to an internal review of the decision to extend the time, they do have a have the right to seek an external review.

Approximately 2500 of all applications were not determined by their due date and were not extended.

However, in addition to formal extensions made under section 14A, some agencies negotiate an informal extension with the applicant. Of the two types of extensions, agencies preferred to formally extend the deadline rather than negotiating an informal extension. Eighty six percent were extensions sought under section 14A, some of these were further extended through negotiation with the applicant.

Chart 5 shows the number of instances agencies reported using each type of extension either by itself or in combination with one or more types of extension.

Chart 5 – Interaction of extension and the volume of each type of extension



5.8 The Cost of FOI

5.8.1 Overall Cost

The overall cost to agencies subject to the FOI Act for the administration of FOI for the 2008-09 reporting year is estimated to be \$5.3 million.

This cost includes salaries, processing costs, training, seeking legal advice, conducting reviews and for the management of FOIMS.

Included in this cost is an estimate from the State Ombudsman for the cost of legal officers to deal with FOI, an estimate from the Police Complaints Authority of its workload in conducting FOI Reviews and the work undertaken by the Crown Solicitor's office relating to FOI during the year.

5.8.2 Staffing

In order to process FOI applications agencies must employ staff with the appropriate skills to complete the tasks involved. Each agency must make the decision on the levels of those staff, however, the FOI Act requires an agency to appoint Accredited FOI Officers who are at an executive level or in a senior position that reports to an executive. The purpose of which is to ensure Accredited FOI Officers have a specific level of seniority and responsibility to make good quality FOI decisions.

Agencies are required to report the staffing associated with processing FOI applications.

The agency returns show that the top five agencies in terms of volume of access applications received (see table 3 in section 5.1) employ a total of 15 FTE. That is, 15 FTE dealt with 56% of all applications made to State Government agencies. Of these 15 FTE, 50% were employed by SAPOL.

The average processing rate for these top five agencies is 1.8 applications per FTE per day with one agency processing over three FOI applications per FTE per day.

Of the total cost agencies reported they incurred in dealing with FOI applications, 88% was identified as salary cost.

5.8.3 Fees assessed and fees collected

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

Agencies are required to report both the regulated fees and charges that could be levied for processing FOI applications and the actual amount recovered. (See Appendix B for further details on the fees and charges that can be levied)

However, the majority agencies do not record fees and charges they could charge an applicant in FOIMS. Therefore the comparison between the amount that agencies could charge and the amount actually recovered is unreliable.

This year agencies recorded \$347 151 as the total amount that applicants could have been charged, 65% of which was recorded by two State Government agencies.

Table 14 shows the actual fees collected by sector in 2008-09. Overall agencies collected two percent less this year than reported the previous year. However, as the table shows this overall figure is not a true reflection of the individual statistics for each sector.

Table 14 – Fees collected by sector in 2008-09

Sector	2008-09	2007-08	% change
State Government	\$123 959	\$127 530	(3%)
Local Government	\$3 545	\$2 435	46%
Universities	\$53	\$103	(48%)
Total	\$127 557	\$130 068	(2%)

5.8.4 Fee Waiver

Section 53 of the FOI Act deals with fees and charges relating to the provision of access to documents under the Act. Section 53(2) deals with the waiving of those fees and charges.

Agencies must provide for a waiver, reduction or remission of fees to ensure that disadvantaged persons are not prevented from exercising their rights under the FOI Act because they are not able to afford the fees.

In addition agencies can also use their discretion to waive, reduce or remit a fee or charge in the event the applicant cannot meet the requirements for fee waiver.

Section 53(2)(b) of the Fees and Charges Regulations provides access to documents free of charge for Members of Parliament provided the work generated for each application does not exceed \$1000.

During 2008-09, 49% of access applications had their fees and charges waived or reduced. Of this 99% had the fees and charges waived.

Table 15 shows half of all applications made across all sectors have either had the fees and charges associated with the application waived or reduced.

Table 15 – Fee waiver for application category by sector

Application category	All sectors	State Govt	Local Govt	Unis
Personal	49%	49%	62%	0%
Non Personal	49%	49%	29%	75%
All application categories	49%	50%	39%	60%

5.9 Amendment Applications

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

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

This year there were 131 FOI applications for amendment, all of which were received by State Government agencies.

In addition, there were seven unfinished FOI applications for amendment brought forward from 2007-08. All of which were brought forward by State Government agencies.

In total there were 138 FOI applications for amendment to be processed by State Government agencies during 2008-09.

Determinations were issued for 124 applications and a further two applications were either transferred to another agency or withdrawn by the applicant.

Table 16 below shows the outcome of amendment applications for 2008-09.

Table 16 – Amendment of Personal Information

Outcome of Amendment application	2008-09	2007-08
Amendment agreed	40	57
Amendment refused	72	118
Partial amendment	6	13
Notation added	6	5
Total	124	193

Table 17 shows the reasons given for refusing to amend a record. More than one reason per application can be given.

Table 17 – Reasons for refusal to amend records

Reasons for refusal to amend records	2008-09	2007-08
Records are not incomplete, incorrect, out-of-date or misleading	67	116
Application contains matter that is incorrect or misleading	1	1
Procedures for amending records are prescribed by or under the provisions of another legislative instrument	5	2
Total	73	119

Like access applications, not all amendment applications are finalised within the reporting year. This year, State Government agencies reported there were six unfinished applications that would be carried forward into 2009-10.

Of these unfinished applications four were still within the 30-day processing timeframe.

5.10 Review & Appeal

Any person who is dissatisfied with the outcome of an application can seek an internal or external review of that decision.

5.10.1 Internal Review

The FOI Act allows any person who is aggrieved by a determination made by an agency 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 by the agency within 14 days.

This year there were 141 applications for internal review received by all sectors.

In addition there were nine unfinished applications for internal review brought forward from 2007-08. All of which were brought forward by State Government agencies.

Therefore, during 2008-09 there were 150 applications for internal review to be processed.

Determinations were issued for 136 applications.

Table 18 below shows the outcome of all internal reviews across all sectors.

Table 18 – Outcome of Internal Review Applications

Outcome of Internal Review	2008-09	2007-08
Decision confirmed	60%	51%
Decision varied	31%	41%
Decision reversed	4%	6%
Application withdrawn	5%	2%

5.10.2 External Review

External Review Authorities

If an applicant is aggrieved by an internal review decision they can seek an external review to the State Ombudsman or the Police Complaints Authority. An applicant can also seek an external review where an internal review was not possible because the determination of the original application was made by the principal officer or the principal officer had extended the timeframe to deal with an application. The State Ombudsman conducts all external reviews, unless South Australia Police or the Minister responsible for South Australia Police made the determination, in which case the Police Complaints Authority conducts the external review.

During the 2008-09 reporting year, the State Ombudsman's Office advised that it received 90 FOI related general enquiries, and there were 92 external review applications and ten investigations to these reviews.

The Police Complaints Authority advised that it undertook 19 external reviews during the year, two of which remained outstanding at the end of the year.

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

Appeal to the District Court

In the event an applicant is aggrieved by the outcome of an external review the applicant may appeal to the District Court. During 2008-09, agencies reported having received two notifications of appeals being made to the District Court. In the same period, agencies reporting that one appeal made to the District court was completed.

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.

5.11 Access applications carried forward to 2009-10

As previously noted not all applications are finalised within the reporting year. Any applications not finalised during the year are carried forward into the next reporting year.

This year agencies reported there were 928 unfinished applications that would be carried forward into the 2009-10 reporting year.

Of these unfinished applications 97% had been made to State Government agencies.

Table 19 shows the number of applications that each sector will carry forward into 2009-2010.

Table 19 – Carried forward to 2009-10

Sector	Within 30 day timeframe	Outside 30 day timeframe	Total Unfinished
State Government	408	491	899
Local Government	19	9	28
Universities	1	0	1
Total	428	500	928

6 APPENDICES

6.1 Appendix A – Agency tables

Table 20 – Access Applications Received – State Government

Agency	Number of Access Applications 2008-09	Number of Access Applications 2007-08
Adelaide & Mt Lofty Ranges Natural Resource Management Board	3	0
Adelaide Cemeteries Authority	0	0
Adelaide Convention Centre	0	-
Adelaide Entertainments Corporation	0	0
Adelaide Festival Centre Trust	0	0
Adelaide Festival Corporation	1	0
Alinytjara Wilurara Natural Resource Management Board	0	-
Architects Board of SA	0	1
Attorney-General's Department	63	78
- Forensic Science SA	31	-
- Office for Racing	0	-
- Office Recreation & Sport	0	-
- Office for Volunteers	0	-
- Office for Women	0	-
- Office of Consumer & Business Affairs	10	-
- Office of the Liquor and Gambling Commissioner	0	-
- Public Trustee	0	-
Balaklava & Riverton Districts Health Service Inc	0	0
Barossa & Light Regional Development Board Inc	0	0
Barossa Health	31	-
Bordertown Memorial Hospital Inc.	6	5
Carclew Youth Arts Centre Inc	0	0
Ceduna District Health Service Inc	36	47
Centennial Park Cemetery Authority	0	0
Children, Youth and Women's Health Service	383	455
Chiropractors' Board of South Australia	0	1
CNAHS - Glenside Mental Health Service	136	97
CNAHS - Lyell McEwin Hospital	598	966
CNAHS – Modbury Hospital	500	505
CNAHS - Primary Health Care Services (North/North East)	9	10
CNAHS – Queen Elizabeth Hospital	749	729
CNAHS – Regional Office	8	2
CNAHS – Royal Adelaide Hospital	2899	3124
CNAHS – SA Dental Services	53	44
CNAHS – St Margaret's Rehabilitation Hospital	3	5
Cooper Pedy Hospital & Health Services Inc	19	14
Coorong Health Service, Meningie & Districts Memorial Hospital	2	0

Agency	Number of Access Applications 2008-09	Number of Access Applications 2007-08
& Health Service		
Country Health SA (Port Lincoln)	0	0
Country Health SA (Murray Bridge Office)	0	0
Country Health SA (Adelaide Office)	9	4
Courts Administration Authority	73	65
Cummins & District Memorial Hospital	1	7
Department for Correctional Services	142	108
Department for Environment & Heritage	33	29
Department for Families and Communities	34	366
- Disability SA	14	-
- Families SA	373	-
Department for Primary Industries & Resources SA	53	69
Department for Transport, Energy & Infrastructure	57	208
- Building Management	10	-
- Corporate Services Division	5	-
- Energy Division	10	-
- Government ICT Services	0	-
- Government Relations & Reform Office	1	-
- Land Services Group	5	-
- Minister's Office	1	-
- Office of Major Projects and Infrastructure	12	-
- Office of the Chief Information Officer	1	-
- Policy and Planning Division	0	-
- Policy, Planning and Community Services	0	-
- Public Transport Division	11	-
- Safety and Regulation Division	29	-
- Services SA	1	-
- Transport Services Division	12	-
Department of Education and Children's Services	131	70
Department of Further Education, Employment, Science & Technology	10	11
Department of Health	124	83
- Office of the Chief Executive	1	-
Department of the Premier and Cabinet	165	185
Department of Trade & Economic Development	23	39
Department of Treasury and Finance	99	57
Department of Water, Land & Biodiversity Conservation	38	27
Domiciliary Care SA	11	9
Eastern Eyre Health & Aged Care - Kimba Campus	0	0
Electoral Commission of South Australia (State Electoral Office)	2	0
Environment Protection Authority	14	1

Agency	Number of Access Applications 2008-09	Number of Access Applications 2007-08
Equal Opportunity Commission	1	1
Essential Services Commission	2	-
Eudunda & Kapunda Health Service Inc	18	17
Eyre Peninsula Natural Resources Management Board	0	0
Fleet SA	0	-
Forestry SA	3	12
Gawler Health Service	65	66
Guardianship Board	1	1
Hawker Memorial Hospital Inc	0	0
Health Performance Council	0	-
History Trust of South Australia	0	0
HomeStart Finance	2	0
Housing SA	86	46
Independent Gambling Authority	0	0
Jamestown Health Service	1	-
Kangaroo Island Health Service	7	8
Karoonda Hospital - Mallee Health Service	0	1
Kingston Soldiers' Memorial Hospital Inc	4	3
Lameroo District Health Service	0	0
Land Management Corporation	6	1
Legal Practitioners Conduct Board	2	-
Legal Services Commission	7	6
Leigh Creek Health Service Inc	0	0
Lower North Health	28	16
Loxton Hospital Complex Inc	0	0
Mallee Health Service (Pinnaroo Soldiers Memorial Hospital)	0	1
Mannum District Hospital	3	1
Medical Board of South Australia	5	8
Mid North Health - Booleroo Health Service	1	0
Mid North Health - Peterborough Hospital	6	6
Mid-West Health	2	4
Millicent & District Hospital & Health Service Inc	8	10
Motor Accident Commission	2	-
Mount Barker & Districts Health Service	15	35
Mount Gambier & Districts Health Service	75	83
Multicultural SA	0	0
Murray Bridge Soldiers Memorial Hospital	10	10
Murray Mallee Community Health Service	6	0
Naracoorte Health Service	15	12
Northern Adelaide Hills Health Service	0	3
Northern Yorke Peninsula Health Service	12	11

Agency	Number of Access Applications 2008-09	Number of Access Applications 2007-08
Nurses Board of South Australia	0	6
Occupational Therapists Registration Board of SA	0	0
Office Ethical Standards & Professional Integrity	1	-
Office for the Ageing	0	-
Office of the Attorney-General	24	21
Office of the Minister - Hon Carmel Zollo	14	11
Office of the Minister - Hon Gail Gago	18	25
Office of the Minister - Hon John Hill	28	19
Office of the Minister - Hon Jane Lomax-Smith	33	26
Office of the Minister - Hon Jay Weatherill	14	8
Office of the Minister - Hon Jennifer Rankine	24	11
Office of the Minister – Hon Karlene Maywald	0	-
Office of the Minister - Hon Kevin Foley	41	18
Office of the Minister – Hon Michael O'Brien	0	-
Office of the Minister - Hon Michael Wright	33	11
Office of the Minister - Hon Patrick Conlon	33	3
Office of the Minister - Hon Paul Caica	8	9
Office of the Minister – Hon Paul Holloway	26	42
Office of the Minister – Hon Rory McEwan	12	11
Office of the Minister – Hon Tom Koutsantonis	1	-
Office of the Minister – Hon Mike Rann	33	-
Office of the Public Advocate	0	1
Office of Venture Capital Board	0	3
Orroroo & District Health Service	2	0
Outback Areas Community Development Trust	0	0
Penola War Memorial Hospital Inc	9	7
Physiotherapists Board of South Australia	1	0
Podiatry (Chiroprody) Board of South Australia	0	0
Port Augusta Hospital & Regional Health Services	82	48
Port Broughton District Hospital & Health Services	2	4
Port Lincoln Health Services Inc	4	6
Port Pirie Regional Health Service	48	48
Pregnancy Advisory Centre	11	11
Quorn Health Services	0	0
Renmark Paringa District Hospital Inc	11	18
Riverland Regional Health Service Inc	65	68
SA Ambulance Service	126	128
SA Fire and Emergency Services Commission	7	3
SA Lotteries	3	1
SA Water	56	32
SAHS – Drug and Alcohol Services South Australia	4	16

Agency	Number of Access Applications 2008-09	Number of Access Applications 2007-08
SAHS – Flinders Medical Centre	623	671
SAHS – Inner Southern Community Health Service	0	0
SAHS – Noarlunga Health Services	159	135
SAHS – Repatriation General Hospital	82	105
South Australia Police Service	1666	1531
South Australian Community Housing Authority	0	0
South Australian Country Fire Service	8	10
South Australian Film Corporation	1	0
South Australian Museum	0	0
South Australian Psychological Board	0	0
South Australian Tourism Commission	14	8
South Coast District Hospital Inc	23	29
South East Natural Resources Management Board	1	2
South East Regional Health Service Inc	0	0
Southern Flinders Health	7	2
State Library of South Australia	1	1
State Procurement & Support Services	0	
State Theatre Company of SA	0	0
Strathalbyn & District Health Service	15	12
Super SA	3	0
Tailem Bend District Hospital	1	3
Teachers Registration Board	1	
The Dog & Cat Management Board	0	0
TRACsa	0	0
TransAdelaide	14	19
Tumby Bay Hospital & Health Services	4	3
Veterinary Surgeons Board of SA	1	0
Waikerie Health Services Inc.	8	3
West Beach Trust	0	0
Whyalla Hospital and Health Services Inc.	25	62
WorkCover Corporation	245	233
Total	11 147	11 228

Table 21 – Access Applications Received – Local Government

Agency	Number of Access Applications 2008-09	Number of Access Applications 2007-08
Adelaide City Council	30	23
Adelaide Hills Council	6	4
Alexandrina Council	5	2
Campbelltown City Council	13	4
City of Burnside	4	6
City of Charles Sturt	35	27
City of Holdfast Bay	4	4
City of Marion	4	6
City of Mitcham	34	18
City of Mount Gambier	0	0
City of Norwood, Payneham & St Peters	3	0
City of Onkaparinga	6	8
City of Playford	5	4
City of Port Adelaide Enfield	36	47
City of Port Lincoln	2	0
City of Prospect	0	0
City of Salisbury	6	15
City of Tea Tree Gully	26	24
City of Unley	65	52
City of Victor Harbor	8	3
City of West Torrens	4	2
Clare & Gilbert Valleys Council	0	0
Coorong District Council	0	0
Corporation of the Town of Walkerville	0	6
District Council of Barunga West	0	0
District Council of Ceduna	0	0
District Council of Cleve	0	0
District Council of Coober Pedy	0	0
District Council of Elliston	1	0
District Council of Franklin Harbour	0	0
District Council of Grant	2	0
District Council of Karoonda East Murray	0	0
District Council of Kimba	0	0
District Council of Lower Eyre Peninsula	0	0
District Council of Loxton Waikerie	0	0
District Council of Mallala	0	0
District Council of Mount Barker	2	2
District Council of Orroroo Carrieton	0	0
District Council of Peterborough	0	0

Agency	Number of Access Applications 2008-09	Number of Access Applications 2007-08
District Council of Robe	0	0
District Council of Streaky Bay	0	0
District Council of Tatiara	0	0
District Council of The Copper Coast	2	N/A
District Council of Tumby Bay	0	0
District Council of Wudinna	0	1
District Council of Yankalilla	1	0
District Council of Yorke Peninsula	1	1
Eastern Health Authority Inc	1	3
Flinders Ranges Council	0	0
Kangaroo Island Council	7	0
Kingston District Council	0	0
Mid Murray Council	6	5
Naracoorte Lucindale Council	0	0
Northern Areas Council	0	0
Port Augusta City Council	17	7
Port Pirie Regional Council	0	0
Regional Council of Goyder	0	0
Renmark Paringa Council	0	0
Roxby Downs Council	0	0
Rural City of Murray Bridge	3	2
Southern Mallee District Council	0	0
The Barossa Council	3	3
The Berri Barmera Council	1	1
Town of Gawler	3	4
Wattle Range Council	3	1
Whyalla City Council	7	1
Total	356	286

Table 22 – Access Applications Received - Universities

Agency	Number of Access Applications 2008-09	Number of Access Applications 2007-08
Flinders University of South Australia	7	5
University of Adelaide	9	7
University of South Australia	5	3
Total	21	15

6.2 Appendix B – Fees and Charges for 2008-09

Each year on 1 July the *Freedom of Information (Fees and Charges) Regulations 2003* are amended to include the annual increase to the prescribed fees and charges.

During 2008-09 the prescribed fees and charges were set as follows.

Schedule 1—Fees and charges

1	On application for access to an agency's document (section 13(c))	\$26.75
2 (1)	For dealing with an application for access to an agency's document and in respect of the giving of access to the document (section 19(1)(b) and (c))	
	(a) in the case of a document that contains information concerning the personal affairs of the applicant-	
	i. for up to the first 2 hours spent by the agency in dealing with the application and giving access	no charge
	ii. for each subsequent 15 minutes so spent by the agency	\$9.95
	(b) in any other case – for each 15 minutes so spent by the agency	\$9.95
(2)	In addition to the fees specified in subclause (1), the following fees are payable in respect of the giving of access to an agency's document:	
	(a) where access is to be given in the form of a photocopy of the document (per page)	\$0.15
	(b) where access is to be given in the form of a written transcript of words recorded or contained in the document (per page)	\$5.95
	(c) where access is to be given in the form of a copy of a photograph, x-ray, video tape, computer tape or computer disk	the actual cost incurred by the agency in producing the copy

Note—

If the applicant requires that a document be posted or delivered, the applicant must pay the actual costs incurred by the agency in posting or delivering the document

(3)	On application for review by an agency of a determination made by the agency under Part 3 of the Act (section 29(2)(b))	\$26.75
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6.3 Appendix C – Objects, 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

3(1)(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.

6.3.1 Scope

The FOI Act applies to all South Australian Government authorities, except where an exemption applies, all Local Government Councils and South Australian public Universities. This means that FOI applications can be made to all of these organisations.

6.3.2 Interpretations

The FOI Act requires that an Accredited FOI Officer must deal with an application for access and amendment. The definition of an **Accredited FOI Officer** means -

(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.

The definition of **agency** means -

- (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 of the Crown or any instrumentality or agency of the Crown or a council (whether or not established by or under an Act or an enactment); or
- (g) a person or body declared by the regulations to be an agency, but does not include an exempt agency⁵.

⁵ Exempt agencies are listed in Schedule 2 of the FOI Act, and in the *Freedom of Information (Exempt Agency) Regulations 2008*. A list of exempt agencies is attached in Appendix E.

6.4 Appendix D – Reasons for Refusing Access

6.4.1 *Application incomplete or wrongly directed*

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

6.4.2 *Unreasonable diversion of an agency's resources*

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

6.4.3 *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.

6.4.4 *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.

6.4.5 *Deemed refusal*

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

6.4.6 *Exempt document*

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

6.4.7 *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.

6.4.8 *Documents created prior to 1987*

Section 20 of the FOI permitted an agency to deny access to documents that came into existence before 1 January 1987 unless 20 years had passed since the document came into existence. This section of the Act is now redundant and consideration will be given for it to be removed when the FOI Act is next amended.

6.4.9 *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.

6.4.10 *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.

6.5 Appendix E – FOI Act Schedule 1 Exempt Documents

6.5.1 *Clause 1 - Cabinet documents*

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

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

6.5.2 *Clause 2 - Executive Council documents*

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

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

6.5.3 *Clause 3 – Exempt documents communicated by another government*

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

6.5.4 *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.

6.5.5 *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.

6.5.6 *Clause 6 - Documents affecting personal affairs*

Documents, which if disclosed, would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead). Documents that contain allegations or suggestions of criminal or other improper conduct where the truth of those allegations or suggestions has not been established by judicial process, or which contain information about an elector (obtained in the course of the administration of the *Electoral Act 1985* but not recorded on the electoral roll) also fall under this category.

6.5.7 Clause 7 - Documents affecting business affairs

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

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

6.5.8 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.

6.5.9 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.

6.5.10 Clause 10 - Documents subject to legal professional privilege

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

6.5.11 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.

6.5.12 Clause 12 - Documents the subject of secrecy provisions

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

6.5.13 Clause 13 - Documents containing confidential material

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

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

6.5.14 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.

6.5.15 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.

6.5.16 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.

6.5.17 Clause 17 - Documents subject to contempt, et cetera

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

6.5.18 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.

6.5.19 Clause 19 - Private documents in public library or archival collections

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

6.6 Appendix F – Exempt Agencies

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

* * * * *

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

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

The following is a list of agencies exempt by the *Freedom of Information (Exempt Agency) Regulations 2008 (as of 30.June.2008)*

- (a) the Senior Secondary Assessment Board of South Australia established under the *Senior Secondary Assessment Board of South Australia Act 1983*
- (b) the RESI Corporation, continued in existence under the *Electricity Corporations Act 1994*
- (c) the Generation Lessor Corporation, the Distribution Lessor Corporation and the Transmission Lessor Corporation established under the *Public Corporations Act 1993*;
- (d) the commission of inquiry established under the *Commissioner of Inquiry (Children and State Care and Children on APY Lands) Act 2004*;
- (e) each agency established by or under the *Health and Community Services Complaints Act 2004*.

The following is a list of exempt agencies in respect of comparative student performance information

- (a) the Minister responsible for the administration of the *Senior Secondary Assessment Board of South Australia Act 1983*;
- (b) the Minister responsible for the administration of the *Education Act 1972*;
- (c) the Department of Education and Children's Services.