

ANNUAL REPORT YEAR ENDED JUNE 2010

Freedom of Information Act 1991



Government
of South Australia

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

MINUTE



**Government
of South Australia**

MINUTES forming ENCLOSURE to

MPSM F2010/000002 P02
eA138857

Minister for Mineral
Resources Development
Minister for Urban
Development and Planning
Minister for Industrial Relations
Minister Assisting the Premier
in Public Sector Management

**TO: CABINET OFFICE
DEPARTMENT OF THE PREMIER AND CABINET**

**RE: ADMINISTRATION OF THE *FREEDOM OF INFORMATION ACT 1991*
ANNUAL REPORT 2009-2010**

Please find attached the Administration of the *Freedom of Information Act 1991* Annual Report 2009-2010 for tabling in both Houses of Parliament, as required pursuant to Section 54 (1) (b) of the *Freedom of Information Act 1991*.

A handwritten signature in blue ink that reads 'Paul Holloway'.

Paul Holloway

Leader of the Government in the Legislative Council
Minister for Mineral Resources Development
Minister for Urban Development and Planning
Minister for Industrial Relations
Minister Assisting the Premier in Public Sector Management

Date: 24 / 11 / 2010

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1 Minister's Foreword

This is the nineteenth FOI Annual Report to be tabled in Parliament since the commencement of the *Freedom of Information Act 1991* (FOI Act) in January 1992. Since then, 149 386 FOI applications have been made.

On 25 March 2010, following the State Election, the FOI Act was committed to me in my role as the Minister Assisting the Premier in Public Sector Management. Prior to this the Honourable Jay Weatherill MP, Minister Assisting the Premier in Cabinet Business and Public Sector Management, was responsible for the FOI Act.

This year agencies received 12 534 applications for access to information held across the three sectors subject to the FOI Act; State Government, Local Government and the three South Australian Universities. This is 1010 more than were received during 2008-09. Despite this increase, only 1.5% of the applications received resulted in an internal review. This figure indicates that Accredited FOI Officers are appropriately applying the provisions of the FOI Act, and are making robust decisions.

The largest increase in the number of applications received was in relation to applications made by Members of Parliament (MPs). Agencies reported a 41% increase in the number of applications made by MPs, rising from 1292 in 2008-09 to 1816 in 2009-10.

During 2009-10, 11 612 applications were determined across the three sectors with 87% being granted access either in full or in part. While this figure is slightly less than last year, agencies reported a decrease of 8% in the number of exemptions claimed and an increase in the number of applications being satisfied by providing information outside of FOI.

Each year the total cost to government for the administration of the FOI Act increases. The cost to agencies for the administration of the FOI Act during 2009-10 is estimated to be \$6.5 million. This is an increase of 23% over last year. Agencies reported recovering \$127 637 or 2% of the total cost through fees and charges.

During the year a number of steps were taken to improve the administration of the FOI Act, including the development of the policy document *Freedom of Information Release of Cabinet Documents under the Ten Year Rule*. A number of guidelines were also developed relating to consultation, the public interest test and the application of fees and charges. The guidelines and the roll out of a new and comprehensive training program will assist agencies improve the administration of the FOI process.

I would like to thank State Records for their support in relation to the administration of the FOI Act, which includes the provision of policy and legislative advice, the development of policies and guidelines and reporting responsibilities, including the production of this report on my behalf. I am also appreciative of the efforts of public sector staff participating in the FOI process.

I am pleased to present the Freedom of Information Annual Report 2009-10 to Parliament.

The Hon Paul Holloway MLC
**MINISTER ASSISTING THE PREMIER
IN PUBLIC SECTOR MANAGEMENT**

2 Freedom of Information in South Australia

2.1 What is the Freedom of Information Act?

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

This is achieved by conferring on members of the public a legally enforceable right of access to documents in the possession of South Australian State and Local Government and the 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 guidelines, regular and ad hoc reporting to the Minister, management of the Freedom of Information Management System (FOIMS), responding to enquiries from members of the public, and the provision of training and advice to agencies. State Records' reporting responsibilities include the preparation of the FOI Annual Report.

In order to produce the FOI Annual Report, all agencies subject to the FOI Act are required to make available to State Records statistical information relating to their processing of FOI applications and the number of contracts entered into containing approved confidentiality clauses. Statistics related to processing FOI applications 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 FOI reporting requirements were gazetted on 15 June 2006 and were unchanged in 2009-10.

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 most State Government agencies, statutory authorities, Local Government authorities and Universities.

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

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

3 The Year In Review

3.1 Amendments to the FOI Act

3.1.1 Senior Secondary Assessment Board of South Australia

The Senior Secondary Assessment Board of South Australia (SSABSA) was established by the *Senior Secondary Assessment Board of South Australia Act 1983*. On 1 July 2008, this legislation was replaced by the *SACE Board of South Australia Act 1983* and SSABSA became known as the SACE Board of South Australia.

The SACE (South Australian Certificate of Education) Board of South Australia is an independent statutory authority that provides curriculum, assessment, reporting and certification services to the three school sectors: catholic, independent and government.

In early 2008, SSABSA was declared an exempt agency under the *Freedom of Information (Exempt Agency) Regulations 2008*. This 'blanket' exemption was carried over (and now applies) to the SACE Board of South Australia.

In 2007, the Government's Education and Care Legislation Reform program suggested that the removal of this exemption would be in line with the Government's policy of accountability and transparency. However, at the same time it was recognised that the 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 agreed that the SACE Board of South Australia would retain its blanket exemption until the new Board was established and had developed a view on what information should remain exempt.

In 2008-09, the SACE Board advised that the issue of its blanket exemption from the FOI Act would be considered during 2009-10. At its July 2010 meeting, the Board resolved to endorse, in principle, the removal of its full exemption under the FOI Act, and would seek a partial exemption under the FOI Act, for the information it has determined should remain exempt.

3.1.2 Freedom of Information (Fees and Charges) Variation Regulations 2010

Each year the *Freedom of Information (Fees and Charges) Regulations 2003* are varied to adjust the fees and charges associated with making and processing FOI applications by an agreed indexation factor. The fee for making an FOI application increased by \$1.00 to \$28.75.

The *Freedom of Information (Fees and Charges) Variation Regulations 2010* was published in the South Australian Government Gazette on 10 June 2010 and commenced operation on 1 July 2010.

3.1.3 Freedom of Information (Exempt Agency) Variation Regulations 2009

On 20 August 2009, the *Freedom of Information (Exempt Agency) Regulations 2008* was varied by the *Freedom of Information (Exempt Agency) Variation Regulations 2009*.

The variation declared the following agencies exempt in respect to information relating to the investigation into the City of Burnside carried out by the investigator appointed under section 272 of the *Local Government Act 1999*:

- Any agency assisting in the investigation;
- The Department of Primary Industries and Resources;
- The Minister for State/Local Government Relations; and
- The Department of Planning and Local Government.

The variation sought to ensure that a person with information relevant to the investigation was not inhibited from coming forward as might be the case if the information was accessible through FOI.

The regulations also declared the investigator appointed under section 272 of the *Local Government Act 1999* to be an exempt agency.

3.1.4 Statutes Amendment (Public Sector Consequential Amendments) Act 2009

The Statutes Amendment (*Public Sector Consequential Amendments*) Act 2009 amended various Acts as a result of the enactment of the *Public Sector Act 2009* and the *Public Sector Management (Consequential) Amendment Act 2009*.

In relation to the FOI Act a consequential amendment was made to the definition of *accredited FOI officer* and to the definition of *agency*. These definitions no longer refer to the *Public Sector Management Act 1995* and instead refer simply to 'Public Service', which is defined in the Public Sector Act.

This amendment came into effect on 1 February 2010.

3.1.5 Statutes Amendment (Victims of Crime) Act 2009

The *Statutes Amendment (Victims of Crime) Act 2009* amended various Acts, including the FOI Act. Specifically, it amended Schedule 2 – Exempt Agencies, to include the Commissioner for Victims' Rights (the Commissioner) as an exempt agency.

This variation sought to ensure that victims of crime have confidence that documents received, generated and processed by the Commissioner are not at risk of disclosure to a third party. The variation recognises that information relating to victims of crime is highly sensitive and personal in nature. This Act commenced operation on 19 September 2010.

3.1.6 Freedom of Information (Fees) Amendment Bill 2010

On 27 May 2010, the Member for Bragg, Ms Vicki Chapman MP, introduced into the House of Assembly the *Freedom of Information (Fees) Amendment Bill 2010* (the Bill).

The Bill sought to amend the FOI Act by inserting a paragraph in section 53 that states that the regulations must provide for access to documents by 'professional journalists' without charge where the time spent by an agency in dealing with the application is less than five hours.

The Bill was introduced to fulfil an election promise by the Liberal Party.

At the close of the reporting year the Bill was yet to be responded to in Parliament.

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 for the recording, processing and reporting of FOI applications by agencies. It also assists agencies manage their FOI related reporting obligations.

State Records has developed and administered this across government system since 2004 and implemented some improvements since that time. During 2010-11 State Records will examine options to ensure the system satisfies emerging business and technological requirements.

3.2.1 Statistical data in this report

State Records wrote to agencies on 1 June 2010 to formally advise them of their obligation to report under the FOI Act and to request that they ensure that information relating to their agency in FOIMS was up to date no later than 31 July 2010. Statistical reports were run against the FOIMS database over the week ending 6 August 2010. The figures used in this

report were accurate as at that time. Any additional data recorded or any amendments made to the data in FOIMS after this date will not be reflected in this report.

Agencies are required to report through FOIMS. A full list of those agencies that reported can be found in Appendix A – *Agency Tables*.

3.2.2 Additional Reporting Responsibilities

Contracts with Approved Confidentiality Clauses

Clause 13(7) of Schedule 1 of the FOI Act requires the Minister to report annually the number of contracts containing approved confidentiality clauses (refer to Appendix E for a description of clause 13(7)).

For the 2009-10 reporting year, agencies reported executing 49 contracts that contained an approved confidentiality clause. This was a decrease of 14 from the previous year. Of the 49 contracts entered into:

- State Government reported 20 – an increase of 10
- Local Government reported 16 – a decrease of 21
- Universities reported 16 – a decrease of 3

In addition to the 49 contracts executed during 2009-10, 155 contracts containing approved confidentiality clauses were recorded in FOIMS that were executed in previous years. The dates of execution of these contracts ranged between 2005 and June 2009. Of these 155 contracts:

- State Government recorded 112
- Local Government recorded 33
- Universities recorded 10

3.3 Advice, Publication & Training

3.3.1 Advice

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

During 2009-10, State Records responded to 1543 FOI related enquiries from members of the public and agencies. This includes 735 telephone and 218 email enquiries, which is 22% more than the previous year.

In addition there were 259 telephone and 331 email enquiries from agencies regarding FOIMS.

Overall, there was a 37% increase in the number of FOI calls received from the public and a 19% increase in the number of FOI and FOIMS enquiries received from agencies.

3.3.2 Publications

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

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

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

The Department of the Premier and Cabinet (DPC) is assigned as the agency to deal with all FOI applications under the Ten Year Rule.

Since 1 October 2009, 414 applications for Cabinet documents have been made to DPC under the Ten Year Rule. Of these, 390 were made by Members of Parliament and 24 by members of the public.

At the close of the reporting year, determinations had been issued for 354 applications and a further eight had been closed or withdrawn by the applicant. Fifty-two applications have been carried forward into 2010-11.

Of these 354 applications access was granted either in full or in part to 99% of the documents requested.

Citizens' Rights to Information Charter

In 2002, the South Australian Government undertook a review of the FOI Act. Part of this review involved a number of administrative reforms, one of which was the development of the Citizens' Rights to Information Charter. The intention of the Charter was to make a clear statement of the Government's commitment to openness and accountability. The Hon Jay Weatherill MP launched the Charter in October 2002.

Shortly following the launch, the Charter was provided to State Government agencies to be displayed in a prominent position in areas where the public are likely to attend.

Electronic copies of the Charter are available on the State Records' website along with a supporting brochure designed to provide information to the public about how information held by government can be accessed.

In response to concerns raised by a member of the public during 2009-10, the Government reminded all State Government agencies of their obligations under the Charter and asked agencies to check that it is appropriately displayed at public access points.

Since the reminder was issued, State Records has distributed 160 Charters and 1626 supporting brochures to agencies.

Other Publications

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

During 2009-10, four new guidelines and one new information sheet were developed and published to meet identified needs for advice. In addition to the new documents, one guideline and nine information sheets were reviewed to improve the quality of the general advice provided to agencies and to reflect any regulatory changes.

All guidelines 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 2009-10

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

During the reporting year State Records delivered 37 FOI training courses and modules that were attended by 590 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 2009-10

Course Name	No. of Courses	No. of Attendees
Introduction to FOI Management System (FOIMS)	3	18
FOI Training for Accredited and Non Accredited Officers ¹	4	66
Training for Accredited and Non Accredited FOI Officers ²	28	458
Module 1 - FOI Officers and the FOI Act	7	120
Module 2 - Processing FOI Applications	7	119
Module 3 - Assessing FOI Exemption Clauses	7	114
Module 4 - Making and Drafting FOI Determinations	7	105
Agency specific FOI Awareness – Lyell McEwin Hospital ³	1	35
FOI Awareness	1	13
Total	37	590

3.3.4 On-line FOI Awareness Education

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 self-paced and has the added benefit of being accessible to staff in regional areas. This training is available to all staff in State Government, Local Government and Universities free of charge.

During 2009-10 there were 112 enrolments in the on-line FOI awareness training.

3.3.5 The FOI Training Strategy

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

In August 2009, the FOI Training Strategy was approved by the Minister responsible for the FOI Act for implementation by State Records. The Strategy's main objective was to develop training to ensure FOI staff have appropriate and contemporary knowledge to undertake the administration of the FOI process through professional development.

Pivotal to the training strategy was the development of a new training course for Accredited FOI Officers that is delivered over two and a half days. Previously this course was conducted over one day. In line with section 54A of the FOI Act, State Records consulted with the Ombudsman and the Police Complaints Authority during its development. Advice was also sought from the Crown Solicitors' Office. The purpose of the training course is to provide the participant with the knowledge and skills to be designated by their Principal

¹ Delivered by the Australian Government Solicitor (July 09 – October 09)

² Delivered by State Records of South Australia (November 09 – June 10)

³ Delivered free of charge

Officer as an Accredited FOI Officer. Other staff involved in the processing of FOI applications also attend the training.

Delivery of the new course commenced in November 2009. Feedback has been positive; in particular, participants are more satisfied with the improved detail provided in the training. Seven courses, consisting of 28 modules in total, were delivered during 2009-10.

During 2010-11 State Records will continue to scope and develop other FOI training to meet the high demand for more agency-specific, practical-based training.

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. Providing access outside of FOI allows the agency to also release other information to provide context to the documents.

During the reporting year there were 182 reported instances where agencies refused an FOI application and instead provided access in full or in part outside of FOI. This is a 40% increase over the figure reported for 2008-09 and a 112% increase over the figure reported for 2007-08.

3.5 Data Inconsistency in FOIMS

Last year it was reported that the analysis of data entered in FOIMS showed that some agencies had recorded information incorrectly. In addition, it was discovered that some were using FOIMS to manage non-FOI related requests for access to information. These kinds of entries in FOIMS are not easily identifiable and create inaccuracies in reporting.

Despite attempts to address these issues, these practices appear to have continued. As discussed in the FOI Annual Report for 2008-09, it is likely that these incorrect practices 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.

These issues will continue to be addressed during 2010-11.

4 Statistical Summary

4.1 All Sectors

This year 12 534 FOI applications for access were received by agencies subject to the FOI Act. In addition, 910 unfinished applications for access were carried over from 2008-09.

Therefore, during 2009-10, there were 13 444 FOI applications for access to be processed by all agencies subject to the FOI Act. Determinations were issued for 11 612, and a further 379 were either transferred to another agency or withdrawn by the applicant. Of the 11 612 applications determined during 2009-10, 87% 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 2008-09 for each sector.

Table 2 – Outcome of access applications - all sectors

Sector	Granted in Full		Granted in Part		Refused	
	09-10	08-09	09-10	08-09	09-10	08-09
State Government	72%	73%	15%	17%	13%	10%
Local Government	66%	68%	21%	24%	14%	8%
Universities	55%	33%	10%	45%	35%	22%
All Sectors	72%	72%	15%	17%	13%	11%

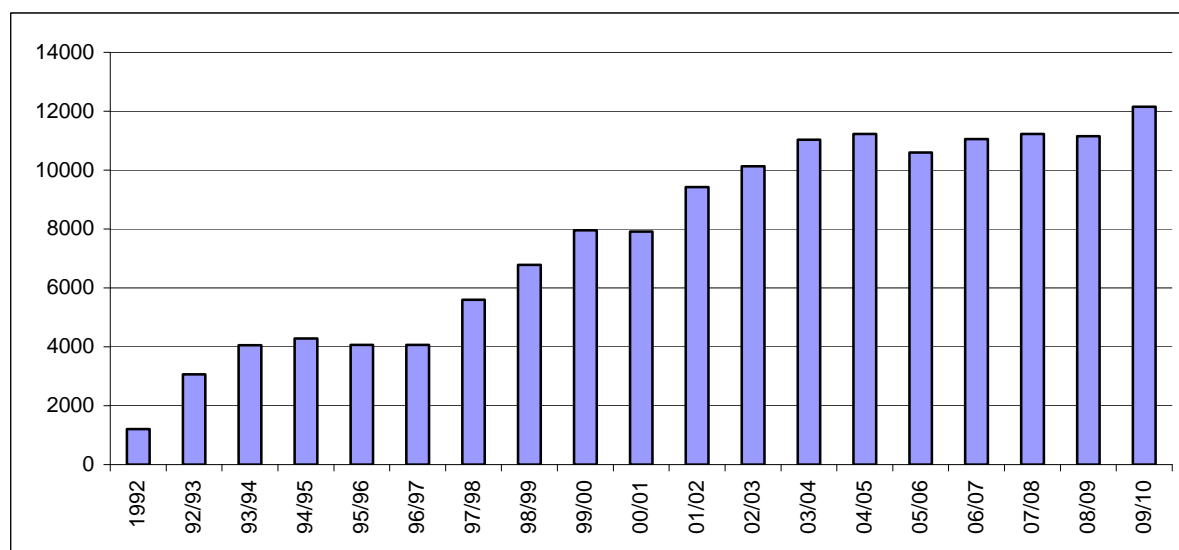
4.2 State Government

Since the commencement of the FOI Act on 1 January 1992, there have been 147 001 applications for access made to State Government.

This year 12 156 FOI applications for access were received by State Government. In addition, 883 unfinished FOI applications for access were carried over from 2008-09 resulting in 13 039 FOI applications for access to be processed.

Determinations were issued for 11 266 applications, and a further 356 were either transferred to another agency or withdrawn by the applicant. Of the 11 266 applications determined during 2009-10, 87% were granted in full or in part.

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



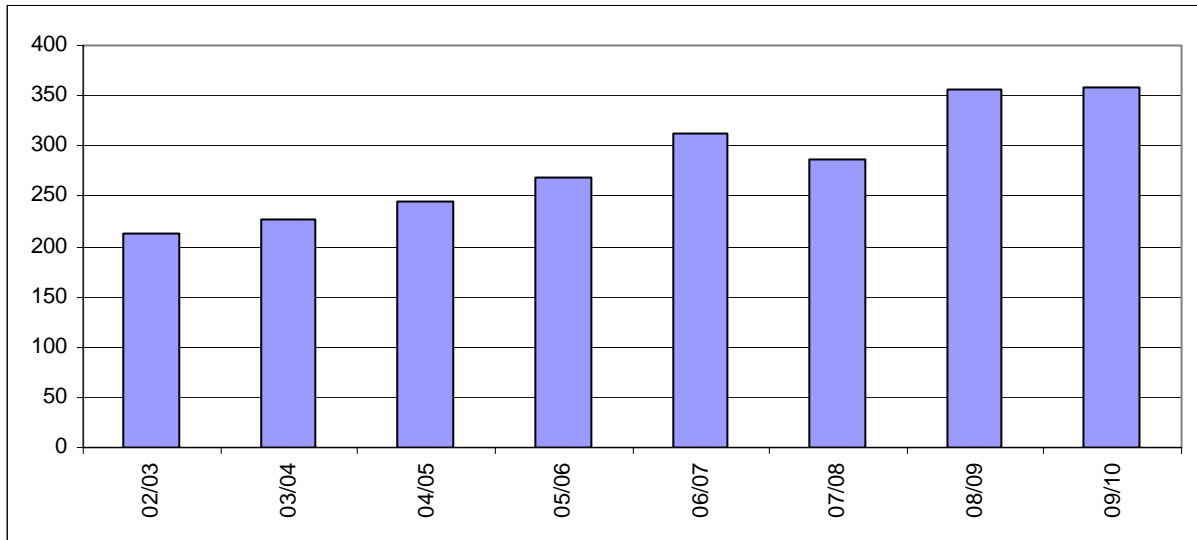
4.3 Local Government

Local Government has been subject to the FOI Act since 1 July 2002. Since this date, there have been a total of 2266 FOI applications made to Local Government.

This year Local Government received 358 FOI applications for access. In addition, 26 unfinished FOI applications were carried over from 2008-09 resulting in 384 FOI applications for access to be processed.

Determinations were issued for 327 applications, and a further 22 were either transferred to another agency or withdrawn by the applicant. Of the 327 applications determined during 2009-10, 87% were granted in full or in part.

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



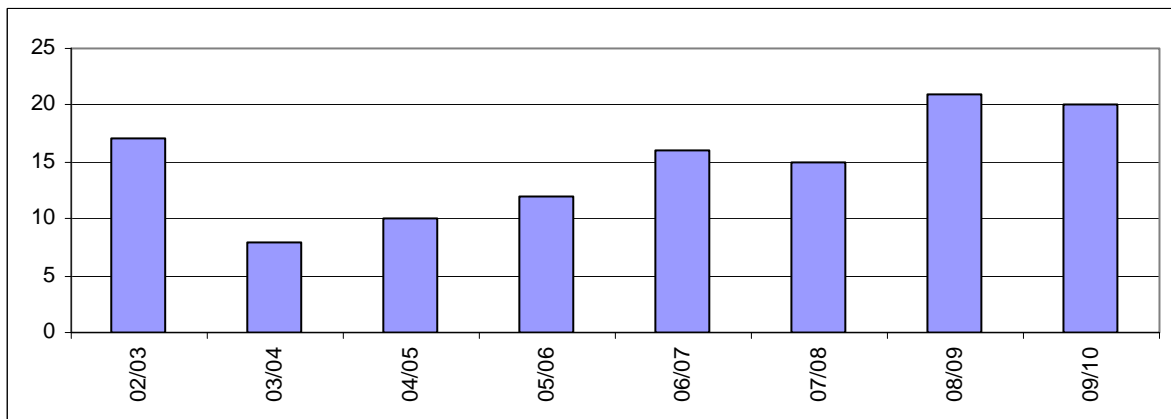
4.4 Universities

The *Freedom of Information (General) Regulations 2002* prescribes the Flinders University of South Australia, the University of Adelaide and the University of South Australia to be included as agencies under the definition of agency in the FOI Act. These Regulations commenced on 11 July 2002. Since that time, there have been a total of 119 applications for access made to Universities.

This year Universities received 20 FOI applications. In addition there was one unfinished FOI application carried over from 2008-09 resulting in 21 FOI applications for access to be processed.

Determinations were issued for 20 with no applications being transferred or withdrawn. Of the 20 applications determined, 65% were granted in full or in part.

Chart 3 – Applications made to Universities since 1 July 2002



5 Activity under the FOI Act

5.1 Volume of Access Applications

As previously reported there were 12 534 applications for access made during 2009-10. This is 1010 or 9% more than the number of applications received in 2008-09.

During the reporting year, 92 or 39% of all agencies subject to the FOI Act did not receive any FOI applications. By sector, 36% of State Government and 49% of Local Government reported receiving no FOI applications. Each of the Universities received at least one FOI application 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. The top five agencies have remained the same as reported in 2008-09, however, the ranking of these agencies has changed.

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

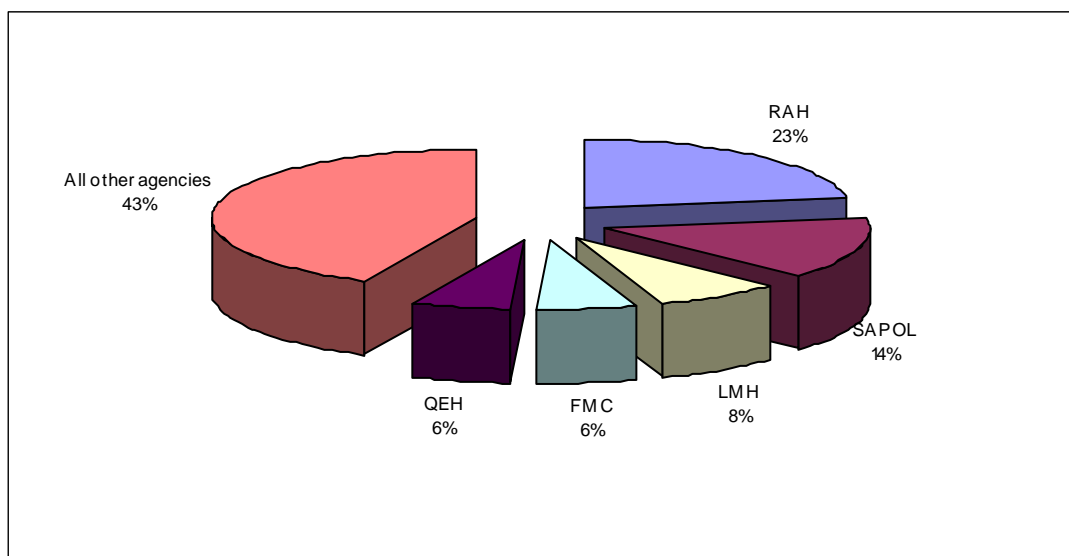
Table 3 – Top five agencies

Agency	2009/10	2008/09	% Change
CNAHS - Royal Adelaide Hospital	2 781	2 899	(4%)
South Australia Police (SAPOL)	1 707	1 666	2.5%
CNAHS - Lyell McEwin Hospital	957	598	60%
CNAHS - Queen Elizabeth Hospital	763	749	2%
SAHS - Flinders Medical Centre	728	623	17%
Total	6 936	6 535	6%

While the top five agencies represent only 2.5% of all State Government agencies, they received 57% of all applications made to State Government.

Three of the top five agencies are part of the Central Northern Adelaide Health Service (CNAHS). While these hospitals are technically no longer recognised as an agency under the FOI Act they are reported separately here for comparative purposes. In total the CNAHS received 5174 applications. In addition there were 177 applications brought forward for 2008-09. Therefore, during 2009-10 there were 5351 FOI applications for access to be processed by the CNAHS.

Chart 4 – Top five agencies compared to all other agencies



5.2 Category of Application

When recording applications in FOIMS, agencies are asked to distinguish between personal and non-personal applications.

Applications that are personal include:

- Applicants seeking access to documents concerning their own personal affairs;
- Parents seeking access to their child's information;
- Requests for access to documents concerning another person's personal affairs on their behalf;
- Next of kin seeking access to documents concerning the personal affairs about a deceased person; and
- Applicants applying for access to documents concerning their own personal affairs as well as other information.

Those applications that are non-personal include:

- An applicant applying for the personal information of another person without consent; and
- 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 2009-10.

Table 4 – Category of application by sector

Application type	State	Local	Unis	Total
Personal	7 897	51	6	7 954
Non-Personal	4 259	307	14	4 580
Total	12 156	358	20	12 534

5.2.1 Top Five Agencies by Category of Application

Personal Affairs Applications

Applications received by the CNAHS, SAHS and SA Police predominantly relate to personal affairs. They are the same agencies as those in table 3, but rank differently for personal affairs applications received. Table 5 (below) shows those agencies that received the largest number of personal affairs applications.

Table 5 – Top five agencies – personal affairs applications

Agency	2009/10
South Australia Police (SAPOL)	1 662
CNAHS - Royal Adelaide Hospital	1 132
CNAHS - Lyell McEwin Hospital	945
CNAHS - Queen Elizabeth Hospital	759
SAHS - Flinders Medical Centre	589
Total	5 087

These agencies received 64% of all applications for personal information made to State Government.

Non-Personal Affairs Applications

Applications that relate to information of a non-personal nature include those from applicants who are applying for policy or administrative documents, government initiatives and projects or information relating to the personal affairs of another individual without their consent.

The following table shows those agencies that received the largest number of applications relating to non-personal affairs. Three of the agencies in the table below also appear in both Tables 3 and 5 above.

Table 6 – Top five agencies – non-personal applications

Agency	2009/10
CNAHS - Royal Adelaide Hospital	1 649
Department of the Premier and Cabinet	605 ⁴
CNAHS - Modbury Public Hospital	324
SAHS - Flinders Medical Centre	139
Department of Health	127
Total	2 844

These agencies received 67% of all non-personal applications made to State Government.

During 2009-10 the Department of the Premier and Cabinet (DPC) received 605 non-personal applications compared to the 126 for the previous year. This was an increase of 380% and is as a result of the operation of the Ten Year Rule policy relating to access to Cabinet documents. As mentioned earlier in this report 414 applications for Cabinet documents were made to DPC under the new policy.

5.3 Types of Applicants

When recording FOI application information in FOIMS, agencies are required to include the type of applicant making the request. Applicants are categorised into four different types. Applications can only have one type of applicant assigned. The types of applicants are as follows:

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

Table 7 – Percentage of applications received during 2009-10 by applicant type for each sector

Applicant type	All sectors	State Govt	Local Govt	Unis
Member of Parliament	14%	14%	13%	50% ⁵
Media	1%	1%	0%	5%
Lawyer / Agent	40%	41%	8%	5%
Public & Other	44%	43%	79%	40%

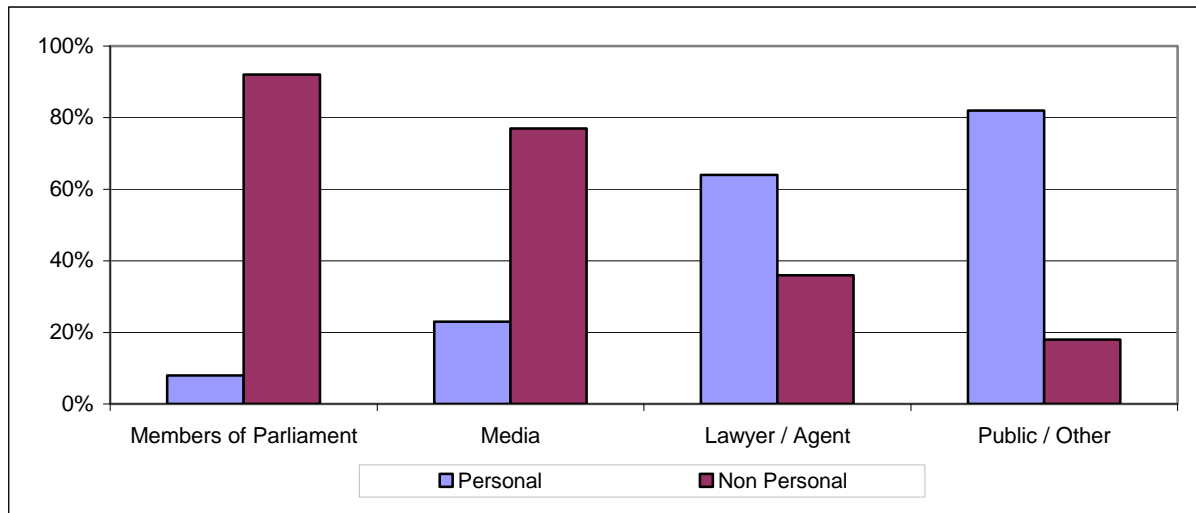
⁴ This figure includes 414 applications made under the Ten Year Rule.

⁵ While table 7 shows that 50% of all applications made to Universities were from Members of Parliament, this represents only 10 applications for access.

Agencies across all three sectors reported that during the year:

- Members of Parliament made a total of 1816 applications, which represents an increase of 524 applications compared to 2008-09. Of these, 1760 were made to State Government, which is 2% more than the previous year.
- The Media made a total of 112 applications this year compared to 81 applications the previous year. Of these, 110 were made to State Government compared to 75 in 2008-09, which represents a 46% increase.

Chart 5 – Applications received by applicant type & application category



5.4 Across Government Applications

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

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

The kinds of documents sought during the year included overseas travel, women's representation on boards and committees, public relations and media staffing, media releases and briefings prepared during the caretaker period.

These kinds of applications are usually made by Members of Parliament and the media.

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

During 2009-10 agencies reported receiving 16 across government applications, all of which were made by Members of Parliament. Of these, ten were made to State Government and six to Local Government. Those made to Local Government were all made by a Federal Member of Parliament.

The ten across government applications made to State Government represented 233 separate applications.

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 2009-10 to the number of applications carried over from 2008-09. The breakdown of applications to be processed for each sector is shown in Table 8 below.

Table 8 – Total applications to be processed by sector

Sector	Access applications	Carried over	Total to be processed
State Government	12 156	883	13 039
Local Government	358	26	384
Universities	20	1	21
Total	12 534	910	13 444

Table 9 shows the total number of applications to be processed for personal and non-personal affairs. It shows that 8597 applications or 64% of all applications were for access to documents relating to personal affairs. This is an increase of 17% from 2008-09.

While the majority of applications made to State Government are for access to documents relating to personal affairs, the majority of applications made to Local Government are for documents relating to non-personal affairs.

Table 9 – Total applications to be processed by sector (personal & non-personal)

Sector	Personal Affairs	Non-Personal Affairs	Total to be processed
State Government	8 534	4 505	13 039
Local Government	57	327	384
Universities	6	15	21
Total	8 597	4 847	13 444

5.6 Outcomes of Access Applications

5.6.1 Determined and Processed

During the reporting year there were a total of 13 444 applications to be processed across all sectors. This represents an increase of 1066 or 9%.

Of the total number of applications to be processed, agencies determined 11 612. A further 379 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 10 below shows the outcome for all access applications determined by sector and whether the application was for documents concerning personal or non-personal affairs.

Table 10 - Outcomes of application by sector

Sector	Personal / Non-Personal	Full Release	Partial Release	Refused
All Sectors	Personal	70%	17%	13%
	Non Personal	75%	12%	13%
	All applications	72%	15%	13%
State Govt	Personal	70%	17%	13%
	Non Personal	76%	11%	13%
	All applications	72%	15%	13%
Local Govt	Personal	58%	40%	2%
	Non Personal	67%	17%	16%
	All applications	66%	20%	14%
Universities	Personal	66%	17%	17%
	Non Personal	50%	7%	43%
	All applications	55%	10%	35%

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 to the FOI Act – ‘Exempt documents’ – or access can be refused for other reasons such as the fees not being paid.

Table 11 – Reasons for refusing access by sector

Details	State	Local	Unis	Total
Application incomplete/wrongly directed	57	3	0	60
Unreasonable diversion of an agency's resources (section 18(1))	33	2	2	37
Abuse of right of access (Section 18(2)(a))	3	0	0	3
Fees not paid	43	5	0	48
Deemed refusal - over 30 days to respond (section 19(2))	218	0	0	218
Exempt document	2116	61	5	2182
Otherwise available (section 20(1)(b), (c) & (d))	167	15	0	182
Documents created prior to 1 January 1987 (section 20(1)(e))	0	0	0	0
Exempt agency	37	0	0	37
Document does not exist/lost	444	20	2	466

Table 12 – Reasons for refusing access by category of application

Details	Personal	Non-personal	Total
Application incomplete/wrongly directed	46	14	60
Unreasonable diversion of an agency's resources (section 18(1))	23	14	37
Abuse of right of access (Section 18(2)(a))	2	1	3
Fees not paid	39	9	48
Deemed refusal - over 30 days to respond (section 19(2))	182	36	218
Exempt document	1652	530	2182
Otherwise available (section 20(1)(b), (c) & (d))	124	58	182
Documents created prior to 1 January 1987 (section 20(1)(e))	0	0	0
Exempt agency	26	11	37
Document does not exist/lost	205	261	466

Exemptions

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

Overall, there has been an 8% decrease in the number of exemptions applied to refuse access to all or part of a document.

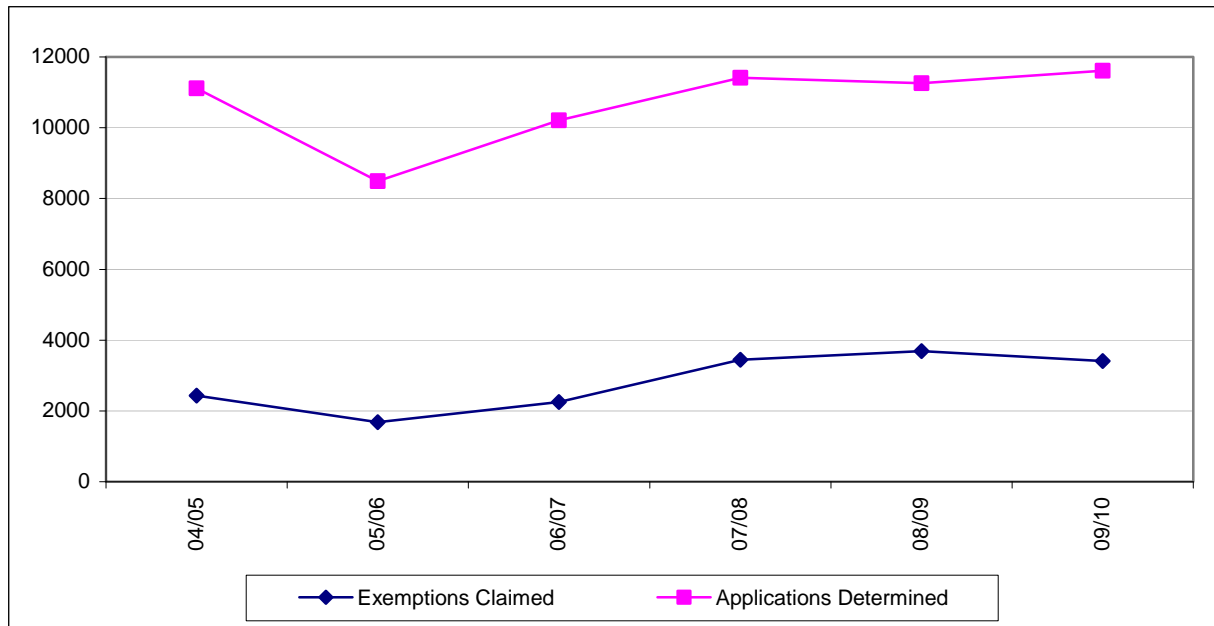
This year exemption clauses were used 3407 times. This is a decrease of 280 or 8.2% compared to the previous year.

Table 13 – Number of exemptions applied across all sectors

Clause	Details	State	Local	Unis
1 & 2	Cabinet and/or Executive Council	96	0	0
3	Exempt documents communicated by another govt.	4	0	0
4	Law enforcement and public safety	739	5	0
5	Intergovernmental / Local Government relations	11	0	0
6	Personal affairs	1266	31	1
6a	Exempt electoral records	5	0	0
7	Business affairs	152	13	2
8	Conduct of research	3	0	1
9	Internal working documents	225	6	0
10	Legal professional privilege	74	7	0
11	Judicial functions	55	2	0
12	Secrecy provisions	321	2	0
13	Confidential information	75	16	2
14 & 15	Economy / financial or property interests	12	2	0
16	Operations of agencies	248	3	1
17	Subject to contempt	26	0	0
18	Companies and Securities	1	0	0
19	Public or archival collections	0	0	0

Chart 6 below shows that over time the comparison between the number of exemption clauses claimed and the number of determinations issued has remained relatively constant. This suggests a consistency of approach to the use of exemption clauses.

Chart 6 - Number of exemption clauses claimed compared to determinations issued



5.7 Time Taken & Extensions

5.7.1 Response Times

Agencies must deal with applications made under the FOI Act as soon as practicable and within 30 calendar days. If the agency takes longer than the 30 days without seeking a formal extension in accordance with section 14A, the agency is taken to have refused access to the document. This is referred to as a deemed refusal. However, determinations made after 30 days without a formal extension are still valid.

Applications considered to be on time include, all applications processed within 30 days and those extended, either formally or informally, and determined within that extended timeframe.

Overall 74% of all applications were determined on time. This is 4% less than reported last year.

Of the 26% not determined on time, 99% were not formally or informally extended.

Of the overdue applications, 48% were determined within 30 days of the due date, 24% were determined between 30 and 60 days after the due date and 11% were determined between 60 and 90 days after the due date.

Chart 7 shows the time taken to process overdue applications. It shows that 72% of all overdue applications are determined within 60 days of the due date.

Chart 7 – Time taken to process overdue applications

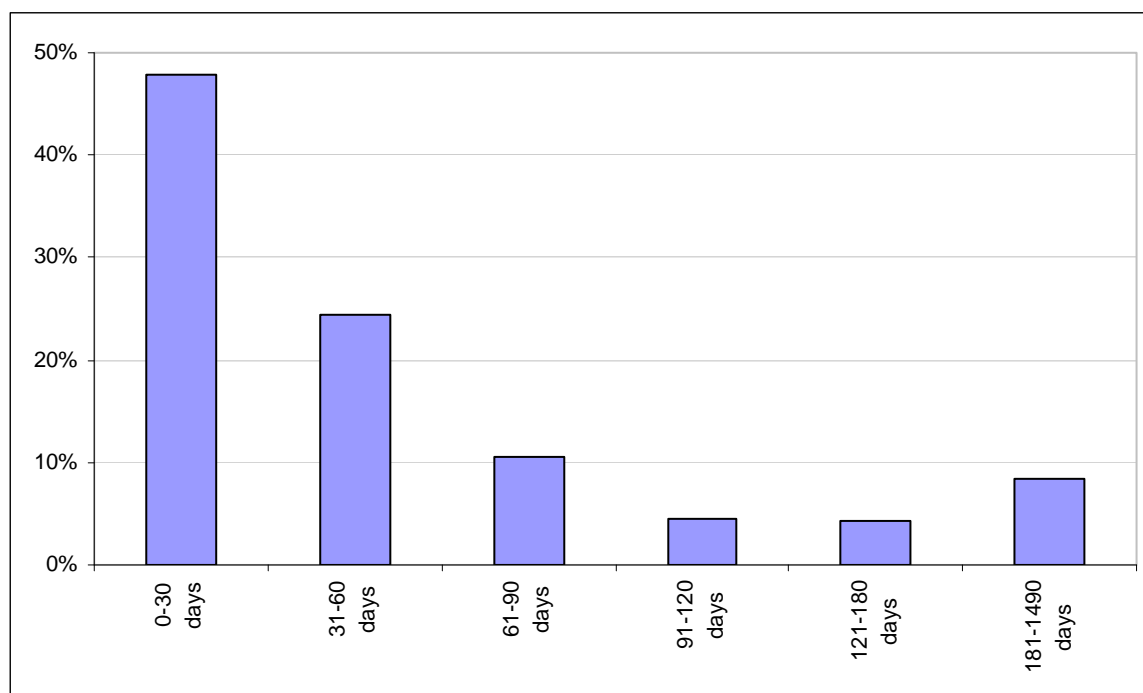


Table 15 shows the response times for each sector where the applications were processed within 30 days.

Table 15 – Response times by sector – within 30 days

Time	State Govt	Local Govt	Unis	Overall
0-15 days	75%	41%	11%	74%
16-30 days	25%	59%	89%	26%

5.7.2 Extensions

Section 14A of the FOI Act permits the principal officer of an agency to 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 require searching a large quantity of information that would unreasonably divert the agency’s resources; or
- a document where consultation is required that cannot be reasonably done within the 30 days.

During the reporting year one percent of all applications determined were extended.

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

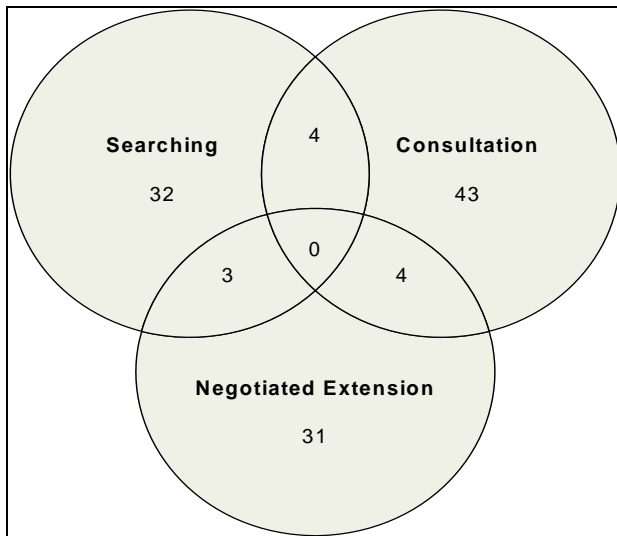
Approximately 2900 or 25% of all applications were not determined by their due date and were not extended. This is 400 more than reported last year. Most were from agencies that deal with large numbers of applications for information relating to personal affairs.

In addition to 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. Seventy four percent of

applications that were extended were done formally, and some were further extended through negotiation with the applicant.

Chart 8 shows the number of instances agencies reported using each type of extension either by itself or in combination with one or more types of extensions.

Chart 8 – Interaction of extension and the volume of each type of extension



5.8 The Cost of FOI

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

The purpose of seeking this information is to quantify the costs associated with the administration of the FOI Act incurred by government.

5.8.1 Overall Cost

The overall cost to agencies subject to the FOI Act for the administration of FOI for the 2009-10 reporting year is estimated to be \$6.5 million.

This cost includes salaries, processing, training, travel and accommodation, seeking legal advice and management of FOIMS.

Included in this cost are estimates from the State Ombudsman for the cost of legal officers to deal with FOI reviews, the Police Complaints Authority for conducting FOI reviews of SA Police determinations, and the advising work undertaken by the Crown Solicitor's Office.

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 number and levels of those staff. While an agency may have a number of staff working on FOI, the FOI Act requires it to appoint Accredited FOI Officers who are at an executive level or in a senior position that reports to an executive. This is to ensure Accredited FOI Officers have an appropriate level of seniority and knowledge to make good quality FOI decisions.

Agency returns show a total of 740 staff across all sectors involved in processing FOI applications, an increase of 148 compared to last year. Many of these staff apply only portions of their time to FOI. The 740 staff equates to 78.7 Full Time Equivalents (FTE) involved in processing FOI applications, of these:

- 63.8 FTE were from State Government
- 13.9 FTE were from Local Government
- 1 FTE was from Universities

Of the 740 staff involved in processing FOI applications across all sectors 434 have been designated as Accredited FOI Officers.

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 Regulations).

Agencies are required to report 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 of agencies do not record in FOIMS the fees and charges they could charge an applicant. Therefore, the comparison between the amount that agencies could charge and the amount actually recovered is unreliable.

This year agencies recorded \$336 465 as the total amount that applicants could have been charged, 60% of which was recorded by two State Government agencies.

Agencies reported recovering \$127 637 or 2% of the total cost (\$6.5M) through fees and charges.

Table 16 shows the actual fees collected by sector in 2009-10.

Table 16 – Fees collected by sector in 2009-10

Sector	2009-10	2008-09	% change
State Government	\$123 811	\$123 959	(5%)
Local Government	\$3 826	\$3 545	8%
Universities	\$0	\$53	(100%)
Total	\$127 637	\$127 557	(1%)

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 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 a 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.

Table 17 shows the fee waiver for application category by sector. It shows that 35% of applications made across all sectors have either had the fees and charges associated with the applications waived or reduced. This is a 14% decrease over the percentage reported last year.

Table 17 – Fee waiver for application category by sector

Application category	All sectors	State Govt	Local Govt	Unis
Personal	42%	42%	20%	0%
Non Personal	23%	21%	28%	7%
All application categories	35%	35%	27%	5%

5.9 Amendment Applications

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

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

This year there were 201 FOI applications for amendment, all of which were received by State Government. This was an increase of 70 applications or 53%.

In addition, there were 12 unfinished FOI applications for amendment brought forward from 2008-09, all of which were made to State Government.

In total there were 213 FOI applications for amendment to be processed by State Government during 2009-10.

Determinations were issued for 198 applications and a further two applications were either transferred to another agency or withdrawn by the applicant.

Table 18 below shows the outcome of amendment applications for 2009-10.

Table 18 – Amendment of personal information

Outcome of Amendment application	2009-10	2008-09
Amendment agreed	48	40
Amendment refused	133	72
Partial amendment	13	6
Notation added	4	6
Total	198	124

Table 19 shows the reasons given for refusing to amend a record. More than one reason can be given per application.

Table 19 – Reasons for refusal to amend records

Reasons for refusal to amend records	2009-10	2008-09
Records are not incomplete, incorrect, out-of-date or misleading	127	67
Application contains matter that is incorrect or misleading	4	1
Procedures for amending records are prescribed by or under the provisions of another legislative instrument	2	5
Total	133	73

5.10 Review & Appeal

Any person who is aggrieved by the determination of an application can seek a 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 182 applications for internal review received by all sectors. In addition there were 13 unfinished applications for internal review brought forward from 2008-09, all of which were brought forward by State Government. Therefore, during 2009-10 there were 195 applications for internal review to be processed.

Determinations were issued for 167 applications.

Table 20 – Outcome of internal review applications

Outcome of Internal Review	2009-10	2008-09
Decision confirmed	66%	60%
Decision varied	27%	31%
Decision reversed	3%	4%
Application withdrawn	4%	5%

5.10.2 External Review

External Review Authorities

If an applicant is aggrieved by an internal review determination they can seek an external review by 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 was made by the principal officer. An applicant can also seek an external review of a determination to extend the timeframe to deal with an application if they consider it to be unreasonable.

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

During the 2009-10 reporting year, the State Ombudsman advised that 71 external reviews were conducted by his office.

The Police Complaints Authority advised that it received ten applications for external review of determinations made by SA Police. Of those, six have been finalised.

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

Appeal to the District Court

Should an applicant be aggrieved by the outcome of an external review the applicant may appeal to the District Court. During 2009-10, agencies reported having received two notifications of appeals being made to the District Court. In the same period, agencies reported that one appeal made to the District Court was completed.

Where an applicant is aggrieved by a decision of the District Court, they can be make a further appeal to the Supreme Court in accordance with the rules of that Court.

5.11 Access Applications Carried Over to 2010-11

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

This year agencies reported there were 1551 unfinished applications that would be carried over to the 2010-11 reporting year, an increase of 67% over 2009-10.

Of the 1551 unfinished applications 98% had been made to State Government.

Table 21 – Carried over to 2010-11

Sector	Within 30 day timeframe	Outside 30 day timeframe	Total Unfinished
State Government	613	901	1514
Local Government	24	12	36
Universities	0	1	1
Total	637	914	1551

6 APPENDICES

6.1 Appendix A – Agency tables

Table 22 – Access applications received – State Government

Agency	Number of Access Applications 2009-10	Number of Access Applications 2008-09
Adelaide & Mt Lofty Ranges Natural Resources Management Board	0	3
Adelaide Cemeteries Authority	0	0
Adelaide Convention Centre	0	0
Adelaide Entertainments Corporation	1	0
Adelaide Festival Centre Trust	0	0
Adelaide Festival Corporation	0	1
<i>Adelaide Shores (see West Beach Trust)</i>		
Alinytjara Wilurara Natural Resources Management Board	0	0
Architects Board of SA	0	0
Attorney-General's Department	102	63
- Forensic Science SA	36	31
- Office for Racing	0	0
- Office Recreation & Sport	0	0
- Office for Volunteers	0	0
- Office for Women	0	0
- Office of Consumer & Business Affairs	12	10
- Office of the Liquor and Gambling Commissioner	0	0
- Public Trustee	0	0
Balaklava & Riverton Districts Health Service Inc	0	0
Barossa & Light Regional Development Board Inc	0	0
Barossa Health	8	31
Bordertown Memorial Hospital Inc	13	6
Carclew Youth Arts Inc	0	0
Ceduna District Health Service Inc	13	36
Centennial Park Cemetery Authority	0	0
Children, Youth and Women's Health Service	392	383
Chiropractors' Board of South Australia	0	0
CNAHS - Glenside Mental Health Service	118	136
CNAHS - Lyell McEwin Hospital	957	598
CNAHS - Modbury Hospital	513	500
CNAHS - Pregnancy Advisory Centre	8	11
CNAHS - Primary Health Care Services (North/North East)	0	9
CNAHS - Queen Elizabeth Hospital	763	749
CNAHS - Regional Office	0	8
CNAHS - Royal Adelaide Hospital	2781	2899
CNAHS - SA Dental Services	34	53
CNAHS - St Margaret's Rehabilitation Hospital	0	3
Cooper Pedy Hospital & Health Services Inc	4	19

Agency	Number of Access Applications 2009-10	Number of Access Applications 2008-09
Coorong Health Service, Meningie & Districts Memorial Hospital & Health Service	0	2
Country Health SA (Port Lincoln office)	0	0
Country Health SA (Murray Bridge office)	0	0
Country Health SA (Adelaide office)	14	9
Courts Administration Authority	53	73
Cummins & District Memorial Hospital	0	1
Defence SA	6	n/a
Department for Correctional Services	196	142
Department for Environment & Heritage	50	33
Department for Families and Communities	63	34
- Adoptions Family Information & Post Care Service	61	n/a
- DFC Corporate	0	n/a
- Disability SA	20	14
- Domiciliary Care SA	3	11
- Families SA	227	373
- Housing SA	106	86
Department for Primary Industries & Resources SA	52	53
Department for Transport, Energy & Infrastructure	48	57
- Building Management	10	10
- Corporate Services Division	0	5
- Energy Division	7	10
- Government ICT Services	0	0
- Government Relations & Reform Office	3	1
- Land Services Group	6	5
- Minister's Office	0	1
- Office of Major Projects and Infrastructure	6	12
- Office of the Chief Information Officer	0	1
- Policy and Planning Division	0	0
- Policy, Planning and Community Services	0	0
- Public Transport Division	8	11
- Safety and Regulation Division	27	29
- Services SA	0	1
- Transport Services Division	8	12
Department of Education and Children's Services	99	131
Department of Further Education, Employment, Science & Technology	7	10
Department of Health	145	124
- Office of the Chief Executive	5	1
Department of Planning & Local Government	49	33
Department of the Premier and Cabinet	647	165
Department of Trade & Economic Development	47	23

Agency	Number of Access Applications 2009-10	Number of Access Applications 2008-09
Department of Treasury and Finance	91	99
Department of Water, Land & Biodiversity Conservation	31	38
Eastern Eyre Health & Aged Care - Kimba Campus	0	0
Electoral Commission of South Australia (State Electoral Office)	1	2
Environment Protection Authority	27	14
Equal Opportunity Commission	1	1
Essential Services Commission	2	2
Eudunda & Kapunda Health Service Inc	11	18
Eyre Peninsula Natural Resources Management Board	0	0
Forestry SA	1	3
Gawler Health Service	42	65
Guardianship Board	0	1
Hawker Memorial Hospital Inc	0	0
Health Performance Council	2	0
History Trust of South Australia	0	0
HomeStart Finance	1	2
Independent Gambling Authority	0	0
Jamestown Health Service	5	1
Kangaroo Island Health Service	9	7
Karoonda Hospital - Mallee Health Service	0	0
Kingston Soldiers' Memorial Hospital Inc	0	4
Lameroo District Health Service	1	0
Land Management Corporation	13	6
Legal Practitioners Conduct Board	8	2
Legal Services Commission	4	7
Leigh Creek Health Service Inc	0	0
Lower North Health	27	28
Loxton Hospital Complex Inc	0	0
Mallee Health Service (Pinnaroo Soldiers Memorial Hospital)	0	0
Mannum District Hospital	5	3
Medical Board of South Australia	12	5
Mid North Health - Booleroo Health Service	0	1
Mid North Health - Peterborough Hospital	3	6
Mid-West Health	4	2
Millicent & District Hospital & Health Service Inc	13	8
Motor Accident Commission	0	2
Mount Barker & Districts Health Service	16	15
Mount Gambier & Districts Health Service	95	75
Murray Bridge Soldiers Memorial Hospital	15	10
Murray Mallee Community Health Service	1	6
Naracoorte Health Service	10	15
Non-government Schools Registration Board	0	n/a

Agency	Number of Access Applications 2009-10	Number of Access Applications 2008-09
Northern & Yorke Natural Resources Management Board	0	n/a
Northern Adelaide Hills Health Service	2	0
Northern Yorke Peninsula Health Service	9	12
Nurses Board of South Australia	0	0
Occupational Therapists Registration Board of SA	0	0
Office for Ethical Standards & Professional Integrity	0	1
Office for the Ageing	1	0
Office of the Attorney-General	35	24
Office of the Guardian for Children and Young People	1	n/a
Office of the Minister - Hon Carmel Zollo	n/a	14
Office of the Minister - Hon Gail Gago	15	18
Office of the Minister - Hon Grace Portolesi	0	n/a
Office of the Minister - Hon Jack Snelling	0	n/a
Office of the Minister - Hon John Hill	27	28
Office of the Minister - Hon Jay Weatherill	22	14
Office of the Minister - Hon Jane Lomax-Smith	9	33
Office of the Minister - Hon Jennifer Rankine	19	24
Office of the Minister - Hon Karlene Maywald	n/a	0
Office of the Minister - Hon Kevin Foley	27	41
Office of the Minister - Hon Michael O'Brien	6	0
Office of the Minister - Hon Michael Wright	26	33
Office of the Minister - Hon Mike Rann	27	33
Office of the Minister - Hon Patrick Conlon	18	33
Office of the Minister - Hon Paul Caica	16	8
Office of the Minister - Hon Paul Holloway	27	26
Office of the Minister - Hon Rory McEwan	n/a	12
Office of the Minister - Hon Tom Koutsantonis	21	1
Office of the Public Advocate	0	0
Office of the Training Advocate	0	n/a
Orroroo & District Health Service	0	2
Outback Areas Community Development Trust	0	0
Penola War Memorial Hospital Inc	6	9
Physiotherapists Board of South Australia	0	1
Podiatry (Chiroprody) Board of South Australia	0	0
Port Augusta Hospital & Regional Health Services	66	82
Port Broughton District Hospital & Health Services	5	2
Port Lincoln Health Services Inc	7	4
Port Pirie Regional Health Service	42	48
Quorn Health Services	0	0
Renmark Paringa District Hospital Inc	2	11
Riverland Regional Health Service Inc	65	65
SA Ambulance Service	236	126

Agency	Number of Access Applications 2009-10	Number of Access Applications 2008-09
SA Arid Lands Natural Resources Management Board	0	n/a
SA Fire and Emergency Services Commission	11	7
SA Lotteries	1	3
SA Multicultural and Ethnic Affairs Commission	0	n/a
SA Water	38	56
SAHS - Drug and Alcohol Services South Australia	12	4
SAHS - Flinders Medical Centre	728	623
SAHS - Inner Southern Community Health Service	0	0
SAHS - Noarlunga Health Services	166	159
SAHS - Repatriation General Hospital	117	82
South Australia Police Service	1707	1666
South Australian Country Fire Service	16	8
South Australian Film Corporation	1	1
South Australian Museum	0	0
South Australian Psychological Board	0	0
South Australian Tourism Commission	9	14
South Coast District Hospital Inc	41	23
South East Natural Resources Management Board	0	1
South East Regional Community Health Service Inc	0	0
Southern Flinders Health	1	7
State Library of South Australia	0	1
State Theatre Company of SA	0	0
Strathalbyn & District Health Service	18	15
Super SA	2	3
Tailem Bend District Hospital	4	1
Teachers Registration Board of SA	0	1
The Dog & Cat Management Board	0	0
TransAdelaide	6	14
Tumby Bay Hospital & Health Services	0	4
Veterinary Surgeons Board of SA	0	1
Waikerie Health Services Inc	6	8
West Beach Trust (<i>marketed as Adelaide Shores</i>)	0	0
Whyalla Hospital and Health Services Inc	49	25
WorkCover Corporation	307	245

Table 23 – Access applications received – Local Government

Agency	Number of Access Applications 2009-10	Number of Access Applications 2008-09
Adelaide City Council	30	30
Adelaide Hills Council	6	6
Alexandrina Council	11	5
Campbelltown City Council	10	13
City of Burnside	11	4
City of Charles Sturt	30	35
City of Holdfast Bay	6	4
City of Marion	5	4
City of Mitcham	22	34
City of Mount Gambier	0	0
City of Norwood, Payneham & St Peters	0	3
City of Onkaparinga	8	6
City of Playford	16	5
City of Port Adelaide Enfield	25	36
City of Port Lincoln	1	2
City of Prospect	0	0
City of Salisbury	12	6
City of Tea Tree Gully	23	26
City of Unley	64	65
City of Victor Harbor	1	8
City of West Torrens	14	4
Clare & Gilbert Valleys Council	3	0
Coorong District Council	0	0
Corporation of the Town of Walkerville	0	0
District Council of Barunga West	0	0
District Council of Ceduna	0	0
District Council of Cleve	0	0
District Council of Coober Pedy	0	0
District Council of Elliston	0	1
District Council of Franklin Harbour	0	0
District Council of Grant	1	2
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	1	0
District Council of Mallala	0	0
District Council of Mount Barker	5	2
District Council of Orroroo Carrieton	0	0
District Council of Peterborough	0	0
District Council of Robe	0	0

Agency	Number of Access Applications 2009-10	Number of Access Applications 2008-09
District Council of Streaky Bay	0	0
District Council of Tatiara	0	0
District Council of The Copper Coast	1	2
District Council of Tumby Bay	0	0
District Council of Wudinna	0	0
District Council of Yankalilla	1	1
District Council of Yorke Peninsula	1	1
Eastern Health Authority Inc	1	1
Flinders Ranges Council	0	0
Kangaroo Island Council	0	7
Kingston District Council	0	0
Light Regional Council	9	n/a
Mid Murray Council	4	6
Naracoorte Lucindale Council	0	0
Northern Areas Council	0	0
Port Augusta City Council	11	17
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	0	3
Southern Mallee District Council	0	0
The Barossa Council	9	3
The Berri Barmera Council	1	1
Town of Gawler	11	3
Wattle Range Council	1	3
Whyalla City Council	3	7

Table 24 – Access applications received - Universities

Agency	Number of Access Applications 2009-10	Number of Access Applications 2008-09
Flinders University of South Australia	2	7
University of Adelaide	16	9
University of South Australia	2	5

6.2 Appendix B – Fees and Charges for 2009-10

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 2009-10 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))	\$27.75
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	\$10.40
	(b) in any other case – for each 15 minutes so spent by the agency	\$10.40
(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)	\$6.20
	(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))	\$27.75
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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.

Scope

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

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 of the Public Service – is an executive employee or an employee who usually reports to an executive employee; 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) a Minister of the Crown; or
 - (b) a person who holds an office established by an Act; or
 - (c) an administrative unit of the Public Service; 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 agency⁶.

⁶ 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 F.

6.4 Appendix D – Reasons for Refusing Access

Application incomplete or wrongly directed

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

Unreasonable diversion of an agency's resources

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

Abuse of the right of access

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

Fees not paid

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

Deemed refusal

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

Exempt document

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

Otherwise available

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

Documents created prior to 1987

Section 20 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.

Exempt agency

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

Document does not exist or is lost

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

6.5 Appendix E – FOI Act Schedule 1 Exempt Documents

Clause 1 - Cabinet documents

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

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

Clause 2 - Executive Council documents

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

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

Clause 3 – Exempt documents communicated by another government

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

Clause 4 - Documents affecting law enforcement and public safety

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

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

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

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

Clause 6 - Documents affecting personal affairs

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

Clause 7 - Documents affecting business affairs

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

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

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

Clause 14 - Documents affecting the economy of the State

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

Clause 15 - Documents affecting financial or property interests

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

Clause 16 - Documents concerning operations of agencies

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

Clause 17 - Documents subject to contempt, et cetera

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

Clause 18 - Documents arising out of companies and securities legislation

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

Clause 19 - Private documents in public library or archival collections

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

6.6 Appendix F – Exempt Agencies

Schedule 2 to the Freedom of Information Act 1991

The following is a list of exempt agencies that appear in Schedule 2 to the *Freedom of Information Act 1991*, as at 19 September 2010. It takes into account the most recent amendment made by the *Statutes Amendment (Victims of Crime) Act 2009* which commenced operation on 19 September 2010.

* * * * *

- 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, the Director of Public Prosecutions and the Commissioner for Victims' Rights;
- 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.

Freedom of Information (Exempt Agency) Regulations 2008

The following is a list of agencies exempt by the *Freedom of Information (Exempt Agency) Regulations 2008 (as at 20.8.2009)*:

- (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 in State Care and Children on APY Lands) Act 2004*;
- (e) each agency established by or under the *Health and Community Services Complaints Act 2004*;
- (f) the investigator appointed pursuant to instrument of appointment dated 22 July 2009 under section 272 of the *Local Government Act 1999* to carry out an investigation into the City of Burnside.

Exempt agencies in respect of certain information – education agencies

The following agencies are declared to be 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.

Exempt agencies in respect of certain functions and information – Training Advocate

The Training Advocate is declared to be an exempt agency in respect of functions set out in clause 2 of the charter (Independent complaint handling process).

The charter means the charter establishing the Training Advocate's functions prepared under section 21 of the *Training and Skills Development Act 2008* and as in force on 4 September 2008.

Exempt agencies in respect of certain information – investigation into City of Burnside

The following agencies are declared to be exempt agencies in respect of information relating to the investigation into the City of Burnside carried out by the investigator referred to in (f) above.

- (a) any agency assisting in the investigation;
- (b) the Department of Primary Industries and Resources;
- (c) the Minister for State/Local Government Relations;
- (d) the Department of Planning and Local Government.