



Commissioner for
**Information and
Public Interest Disclosures**
NORTHERN TERRITORY



2016-17
ANNUAL REPORT



30 September 2017

The Hon Natasha Fyles MLA
Attorney-General and Minister for Justice
Parliament House
DARWIN NT 0800

Dear Minister

Pursuant to section 98 of the *Information Act* and section 48 of the *Public Interest Disclosure Act*, please find attached the Annual Report on the operations of the Office of the Information Commissioner and the Commissioner for Public Interest Disclosures for the period 1 July 2016 to 30 June 2017.

Yours sincerely

A handwritten signature in black ink, appearing to be "B. Monaghan".

Brenda Monaghan
Commissioner, Information and Public Interest Disclosures

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History

In 2003, following the earlier passing of the *Information Act*, the independent office of the NT Information Commissioner opened its doors and began accepting complaints from individuals who wanted information from public sector organisations or who felt their privacy had been breached by one of those organisations. In 2009, the passing of the *Public Interest Disclosure Act* established the independent Office of the Commissioner for Public Interest Disclosures at the same premises. Brenda Monaghan is the current Commissioner for both offices. This is the seventh Annual Report of the combined Office and the thirteenth of FOI and privacy law in the NT.

Legislation

The *Information Act* provides for reasonable public access to government information, the responsible collection, correction and handling of personal information and the requirement for appropriate records and archives management. The Act is intended to strike a balance between competing interests of openness & transparency and the legitimate protection of some government information, including personal information about individuals.

The Commissioner's powers include:

- Dealing with Freedom of Information and privacy complaints, including the making of binding orders and compensation payments of up to \$60,000 for complaints made before 1 May 2016;
- Referring complaints made from 1 May 2016 to the NT Civil and Administrative Tribunal to handle appeals from decisions of the Information Commissioner;
- Commenting on the privacy implications of new legislation and new government initiatives;
- Conducting audits of records held by public sector organisations;
- Granting an Authorisation on request by public sector organisations to collect, use or disclose personal information in a manner that would otherwise contravene the Information Privacy Principles;
- Educating the public and public officers about FOI and privacy.

The *Public Interest Disclosure Act* provides for the disclosure and investigation of serious improper conduct by NT public officers and NT public bodies and the protection of disclosers from reprisal action being taken against them.

The Commissioner's powers include:

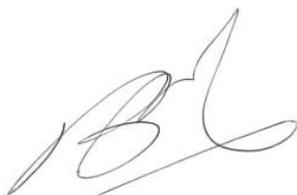
- Investigating complaints of serious improper conduct in NT public bodies;
- Supporting and protecting disclosers including prosecuting those committing acts of reprisal;
- Strong coercive powers to inspect certain premises, require the production of documents and the attendance of a person for examination before the Commissioner;
- Reporting findings of investigations to the responsible authority, and making recommendations for action to be taken as a result of those findings; and
- Discretion to make a public report if recommendations are not complied with.

Message from the Commissioner

The 2016/17 Annual Report comes at an interesting time for the Office of the Commissioner, Information and Public Interest Disclosures. It is anticipated that during 2017/18, the functions and staff of the Office of the Information Commissioner will move to the Ombudsman's Office (NT). Access to government information and privacy protection will remain as important as ever as staff continue to deal with complaints management and to provide advice on the challenges raised by information-sharing, Open Data, Big Data, new technologies and cloud computing within public sector organisations.

The staff involved in the Office of the Commissioner for Public Interest Disclosures will become part of the Office of the Independent Commissioner Against Corruption (ICAC) when the ICAC legislation comes into force and the *Public Interest Disclosure* Act is revoked. My office has had the opportunity to contribute to the development of the ICAC Bill and has advocated a broad discretion to the ICAC concerning its powers of investigation and referral, good access to government information to properly inform ICAC decision making, robust reporting mechanisms to keep Parliament and the public informed and decent protections so that individuals remain confident that the system will protect them if they provide information about corruption or assist the ICAC with its investigations.

This report summarises the work done by my Office during the 2016/17 reporting period. My sincere thanks to my team, some of whom have worked with me for many years and others who have joined more recently. All have provided an important contribution and I commend them for their hard work, professionalism and good humour.



Brenda Monaghan



Introduction

The Office investigates complaints of ‘improper conduct’ under the *Public Interest Disclosure Act*. This definition includes conduct which would constitute a criminal offence or provide reasonable grounds for terminating the employment of the public officer because they are:

- seeking or accepting a bribe or other improper inducement
- involved in any other form of dishonesty
- showing inappropriate bias
- guilty of a breach of public trust or
- misusing public information.

‘Improper conduct’ also includes:

- substantial misuse or mismanagement of public resources
- substantial risk to public health or safety
- substantial risk to the environment
- substantial maladministration that specifically, substantially and adversely affects someone’s interests

whether or not the conduct constitutes a criminal offence or would provide reasonable grounds for terminating the services of the public officer. ‘Improper conduct’ also includes an act of reprisal (e.g. sacking a whistleblower because of their disclosure) or a conspiracy or attempt to engage in improper conduct that constitutes a criminal offence.

The Investigation Process

All public interest disclosures received by this Office are subjected to a rigorous initial assessment. At the completion of this process a decision is made about the proposed course of action to be adopted: investigation, referral or rejection. These decisions are not made lightly, particularly when the consequences of an investigation are significant as they include referrals for criminal investigation or disciplinary action leading to termination of employment. Further, there are often ‘whistleblowers’ (called disclosers) who require protection.

Once a matter has been assessed as a Public Interest Disclosure (PID) by the Commissioner, the robust investigative powers found in the Act are invoked.

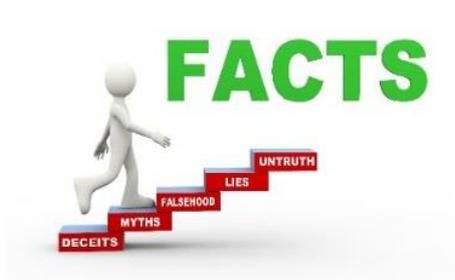
They include powers:

- to require a person to answer specified questions or provide specified information;
- to require a person to produce specified documents or things or documents or things of a specified kind in the person’s possession or control;
- to require a person to attend for examination before the Commissioner or her delegate;
- to enter and inspect premises occupied by a public officer or public body (other than a residence);
- to take into those premises persons, equipment and materials reasonably required for the investigation;
- to take copies of, or extracts from, documents located at the premises; and
- to serve confidentiality notices on those providing information to the investigation.

A refusal to comply with a request of the Commissioner is an offence against the Act punishable by fine or imprisonment.

The Referral Power

A variety of complaints alleging improper conduct by public officers and public bodies are made to this Office. Many complaints are better dealt with by others and the Commissioner has the power to refer complaints either formally or informally. If an allegation involves less serious misconduct or matters outside the Commissioner’s jurisdiction, then the complainant will be assisted with an informal referral to the appropriate agency. Where matters involve allegations of ‘improper conduct’ that the Commissioner decides would be better dealt with by a referral body prescribed under the Act, then the matter is ‘formally referred’ after discussion with the discloser. If it becomes evident during an investigation that criminal activity has occurred, then the matter will be formally referred to Police.



Case Studies

The Case Studies are chosen from complaints handled during 2016/17 and are examples of the type of work this Office has been undertaking. All are sufficiently de-identified to provide information without causing concerns for either the discloser or the confidential nature of the investigation process.

Case Study – Lacking Supervision

The PID Commissioner conducted an investigation into allegations of improper conduct within a small work unit. The unit was involved in an independent project with office accommodation separate from the rest of the department. It was alleged that officers in the unit sold items purchased with NTG funds to benefit a private body, informally sub-let the NTG premises they occupied without CEO approval and wilfully ignored the Department's leave and TOIL (time off in lieu) policies for their own benefit. The unit also conducted private business during work hours using NTG premises and equipment and they fundraised for the benefit of a private Association.

Following an investigation, the Commissioner identified several areas of concern including a failure of staff within the unit to comply with Departmental policies and procedures, a misreporting of the success of the project to maintain Departmental support, potential criminal conduct by one officer and an overall failure of oversight and supervision by managers of the unit.

The potential criminal conduct was formally referred to the NT Police for investigation. The option of departmental disciplinary action against the managers of the program was not possible as those individuals no longer worked for the NTG. The Department acknowledged the findings of the Commissioner and agreed to review their management processes and procedures to prevent a similar situation occurring in the future. They also agreed to strengthen their HR policies and training regarding leave entitlements and TOIL. The Commissioner was satisfied with the Department's response.

Case Study – Allegation of Corruption

The PID Commissioner conducted an investigation into allegations that the discloser was unlawfully targeted and ultimately prosecuted because of a personal vendetta against him by other public officers. Further claims were made that the officers unlawfully withheld money from the discloser upon his resignation and that they deliberately withheld information which would have led to a decision by the DPP not to prosecute him. In doing so, they failed to comply with internal investigation and prosecution guidelines. The discloser alleged that these actions amounted to stealing and attempting to pervert the course of justice on behalf of the officers involved.

The Department fully cooperated with an extensive investigation into all allegations made and the Commissioner was satisfied that there was no improper conduct in this matter. Despite some defects in the prosecution of the case against the discloser, there was no evidence that the decision to prosecute had been motivated by a personal vendetta or that information was deliberately withheld from the prosecutor as alleged. However, there were valid issues raised regarding some internal administrative and investigative procedures in the discloser's dealings with the Department that were either not followed correctly or were

misunderstood by the officers involved in the matter. The Commissioner recommended to the CEO that these concerns should be appropriately addressed, including the need for further staff training.

Case Study – Public Safety Issue

The PID Commissioner commenced an investigation into allegations that public officers had failed to respond to safety concerns raised with them and had failed to properly oversight traffic management contractors. The concern expressed was that these alleged failings may have contributed to a road fatality. The Commissioner was aware that an investigation into the fatality was being undertaken by NT Police who were preparing a brief for the Coroner. The matter was formally referred to NT Police for investigation and is now with the Coroner.

Case Study – Procurement Concern

The PID Commissioner commenced an investigation into allegations that a public officer arranged for staff to bypass procurement guidelines and enter into a contract for goods and services from a company owned by the public officer.

With the assistance of the Auditor-General, it was established that the Corporation had advertised for the goods and services through a Request for Tender (RFT) as required under the Corporation's procurement guidelines. Referees were checked and those companies who submitted responses were ranked accordingly. The public officer who had an interest in one of the companies excused himself from the decision making process and the company was selected based on the references and price. The Auditor-General reviewed the RFT and the signed contract and found that there was adequate disclosure and that the contract appeared to be at arm's length. No other issues or concerns were apparent.

Case Study – Acting Beyond Powers

The PID Commissioner conducted an investigation into an allegation that a public officer who was authorised under an Act to investigate alleged breaches of that Act failed to investigate and ultimately prosecute a matter because he had a personal relationship with the person being investigated. After a careful investigation, the Commissioner was satisfied that the public officer did not have a personal relationship with the person; that he had in fact adequately investigated the complaint, but that he did not have the legislative discretion to dismiss or deal with the complaint; and that he should have referred the decision on whether or not to prosecute to the authorised body.

Interestingly, the investigation disclosed an internal Departmental report that made numerous recommendations to amend the governing legislation, including one which would have given the public officer discretion to either dismiss or deal with complaints. The Commissioner found that there was no improper conduct as defined by the PID Act committed by the public officer but emphasised that legislative change must occur if the Department wanted the officer to have greater discretion to dismiss or deal with matters.

Case Study – Disclosing Confidential Information

The PID Commissioner conducted an investigation into an allegation that a senior public officer involved in the procurement and management of government contracts improperly divulged confidential information relating to an upcoming tender to a tenderer. Further, it

was alleged that the public officer asked for and received equipment from a contract holder and arranged for work to be completed by another contractor on his personal property - with the contractor providing inflated invoices for legitimate works to cover the cost of the personal works performed.

Preliminary interviews were conducted with witnesses and the matter was referred to the NT Police for criminal investigation.

Case Study – Improper Seizure and Sale

The PID Commissioner conducted an investigation into an allegation that public officers within a Department seized specific property and arranged for it to be sold at 'under value' to a colleague without first conducting enquiries regarding the ownership of the property as required by their governing legislation. It was further alleged that the public officers later improperly altered a Departmental data base to hide their actions.

Following a preliminary investigation, the matter was referred by the Commissioner to the NT Police for criminal investigation.

Reprisal Protections

The welfare of the discloser is a high priority and where possible, regular contact is maintained during the investigation and subsequently as required. Some disclosers wish to remain anonymous in which case we cannot contact them.

Many legislative protections are provided to disclosers. A person cannot be sued or sacked from the public sector for reporting improper conduct to the Commissioner or assisting with the investigation provided their information is truthful to the best of their knowledge. If they feel vulnerable remaining in their current job, they can obtain the Commissioner's assistance to be relocated either within the public body or to another public body.

The Act also provides protection against reprisal action taken against a person because that person or a third person:

- has made or intends to make a public interest disclosure; or
- has complied with or intends to comply with, a requirement imposed by a person acting in an official capacity; or
- has cooperated or intends to cooperate with a person acting in an official capacity.

Criminal penalties can be imposed for committing a reprisal action including a maximum 2 years imprisonment. The person who commits the act of reprisal may also be liable in damages to the other person. The Commissioner has developed guidelines and protocols to assist in the protection of disclosers and to minimise the chance of reprisal action.

Although it is quite rare for the Commissioner to receive a complaint about an act of reprisal, this year there were two formal complaints received.

Matters Still Under Investigation as at 30 June 2017

As at 30 June 2017, there were 14 public interest disclosure complaints that were still in the process of being assessed, investigated or finalised. They will be carried over for completion in the 2017/18 year. They include investigations into allegations of improper conduct including:

- Bribery leading to the inappropriate issuing of industry licenses;
- Conflicts of interest and inappropriate bias in tendering processes, in recruitment and in the use of consultants;
- Allegations of inappropriate and threatening workplace behaviour and falsifying statements to an investigative body;
- Breaches of public trust by public officers;
- Theft of public assets;
- An allegation of the misuse of a hidden optical surveillance device;
- Breaches of public trust by a local government council; and
- Substantial maladministration and substantial misuse of public resources.

The status of these 14 complaints can be summarised as follows:

- Eight complaints are undergoing detailed assessment before a decision is made regarding their status; and
- Six complaints have been accepted as public interest disclosures and are currently being investigated.
- Of the six matters currently under investigation, two have been classified as ‘major investigations’ (see page 13).



Performance measures

Introduction

For the purpose of performance reporting, all allegations containing ‘public interest information’ that require assessment are classified as ‘public interest disclosures’ – including those that are ultimately assessed as not falling within that category. This does not include complaints that can be quickly and easily completed. Public interest information is defined in the Act as information that, if true, would tend to show a public officer or public body has engaged, is engaging, or intends to engage, in improper conduct.

The summary below details the performance of this Office relating to quantity, quality and timeliness for the reporting period. Some of the performance measures for 2016-17 are published in Budget Paper No 3.

Quantity – Public Interest Disclosures received

The total number of new disclosures handled by this Office during the reporting period returned to the level seen in 2014/15 following a spike in new matters in the 2015/16 reporting period.

Performance Measure	2014-15 Actual	2015-16 Actual	2016-17 Actual	2016-17 Estimate
Public Interest Disclosures handled	50 31 new 19 carried over	66 48 new 18 carried over	46 29 new 17 carried over	60

Timeliness – Public Interest Disclosures resolved or reported

We aim to resolve 70% of complaints within six months and during this reporting period, 69% of disclosure files were completed within the six-month timeframe. This result supports the effectiveness of new initiatives adopted in the 2015-16 reporting period, including the implementation of an accelerated triage system to assist in finalising less complex matters, the introduction of a new case management system and a concerted effort by PID investigators to resolve matters as promptly as is possible without compromising quality.

Performance Measures	14-15 Actual	15-16 Actual	16-17 Actual	17-18 Estimate
Timeliness Disclosures resolved or investigation reports presented to the responsible authority within six months	56%	76%	69%	70%

Quantity and quality – awareness and training

Although the investigation of complaints and the protection of disclosers are our major priorities, an important objective for this Office is the education of disclosers, public officers and public bodies regarding their rights and obligations under the PID Act.

The Office continued to provide both public awareness sessions for the broader community and training sessions tailored to the specific concerns of various public bodies. Most of our public officer training is a direct result of vulnerabilities highlighted in investigations.

In 2016-17, face-to-face training sessions took place in Darwin and Palmerston, with a total of 55 participants from a variety of public bodies. Several factors prevented us from conducting training sessions outside of Darwin this year. They included the fact that many of the government departments and public bodies were involved in pre and post election matters and were not available for training. Others were interested in waiting for the new ICAC to commence before seeking further training. We also had a changeover of staff that meant our focus was on internal rather than external training.

The Office maintains an informative website including user friendly training modules for public officers and disclosers at www.blowthewhistle.nt.gov.au. These interactive training modules enable individuals to increase their knowledge of the Act and the functions of this Office. 206 separate training modules were successfully completed via the website over the reporting period. It was pleasing to see an increase in the use of the on-line training packages during this period and feedback to the office shows that the modules remain current, useful and user-friendly.

The Office also provides email and telephone advice via freecall 1800 250 918.

Performance Measures		2016-2017 Estimate	2016-2017 Actual	2017-2018 Estimate
Quantity	Awareness and training			
	Face-to-face presentations	10	6	10
	Number of participants – including online	400	261	400
Quality	Participant satisfaction *	90%	96%	90%

* for face-to-face training

Reporting requirements under section 48 of the Act

Section 48 of the PID Act requires the Commissioner to include in the Annual Report details of performance with respect to a number of functions. The Commissioner's response is set out below.

The number and kinds of Public Interest Disclosures made

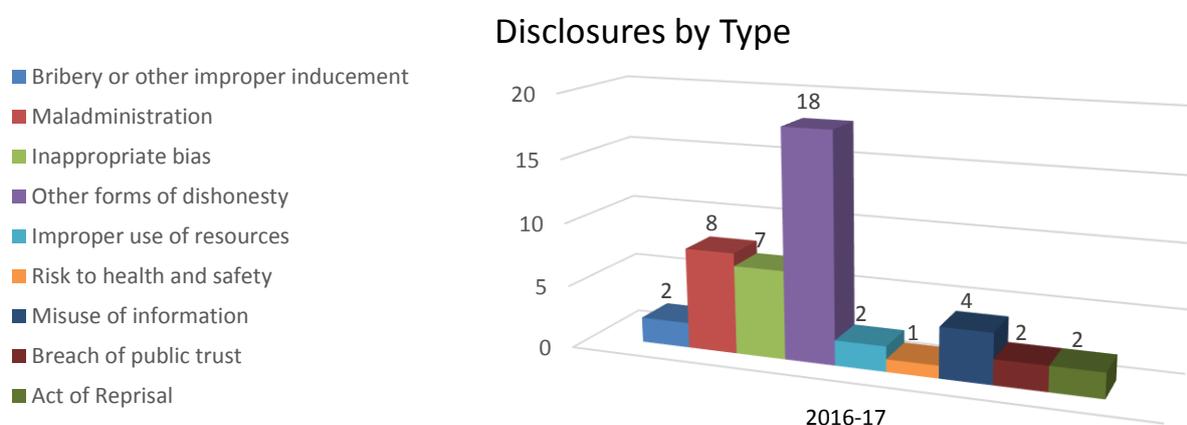
During 2016-17, this Office handled 46 disclosure complaints with 29 being new disclosures alleging many categories of improper conduct. Most involved one specific act of improper conduct but a few complained of several different acts by several public officers. Where

wrongdoing has been supported or ignored by senior management or concerns serious systemic issues, the improper conduct is extended to the whole organisation.

Approximately 78% of the new disclosures related to alleged incidents that were either ongoing or occurring within 12 months prior to the disclosure being made. Four of the matters handled were referred to the Commissioner by responsible Chief Executives or persons acting under delegation to do so, (who are required to refer any public interest disclosure made to them within 14 days). This is a pleasing acknowledgement of the professional working relationships that exist between the PID office and NT public bodies generally.

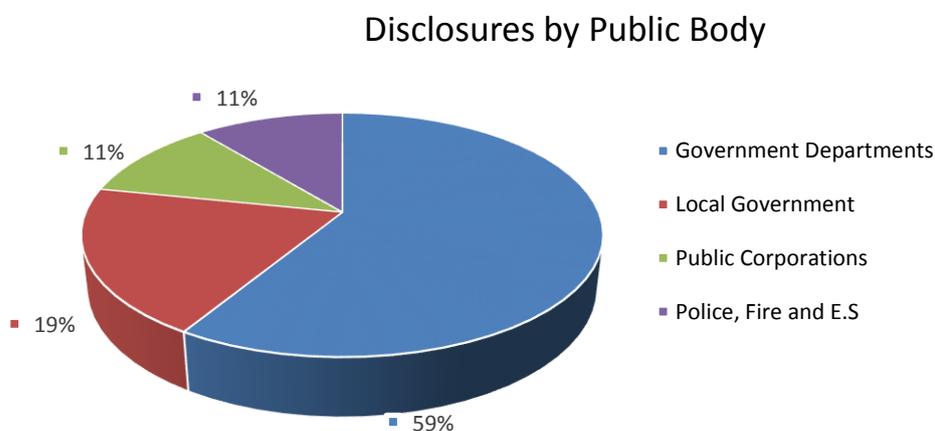
Disclosures – by type

Of the disclosures received during the reporting period, the principal allegations of improper conduct are set out in the diagram below. The types of allegations fall into similar categories to those received in previous years.



Disclosures – by public body

The diagram below provides a breakdown of the public bodies about which public interest disclosures were made in the reporting period. Most disclosures relate to NT Government Departments, a result that would be expected as they are the biggest employer of public officers.

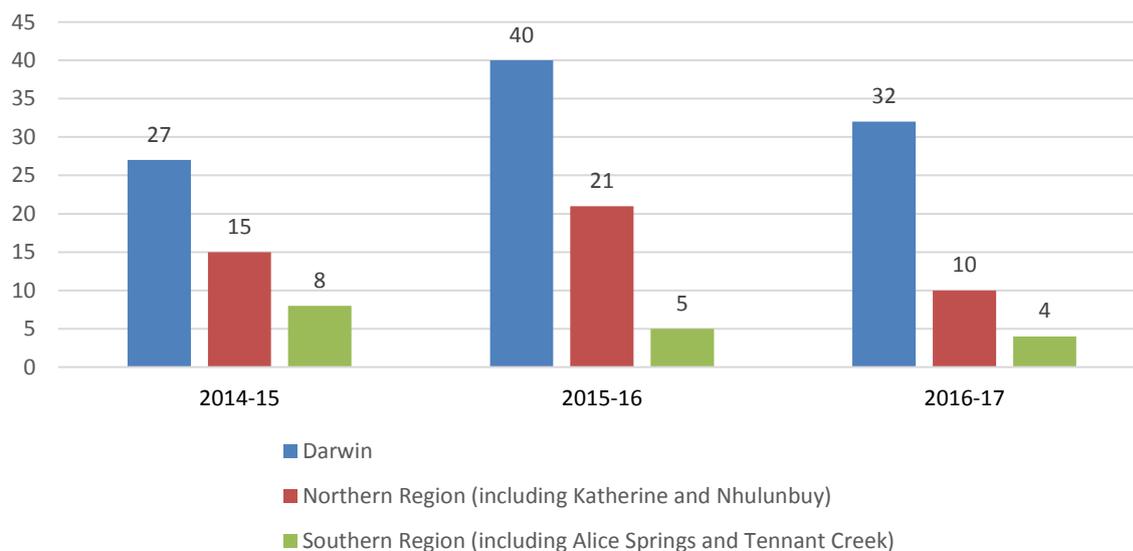


Disclosures – by region

As expected, more allegations were received about public bodies/officers in the Darwin region. The Office attributes this to the higher number of public bodies and government departments located in Darwin and a greater knowledge of the existence of this Office.

With regard to the rural areas, more complaints were about public bodies/officers in the Northern, rather than the Southern Region. These figures are generally consistent with previous years.

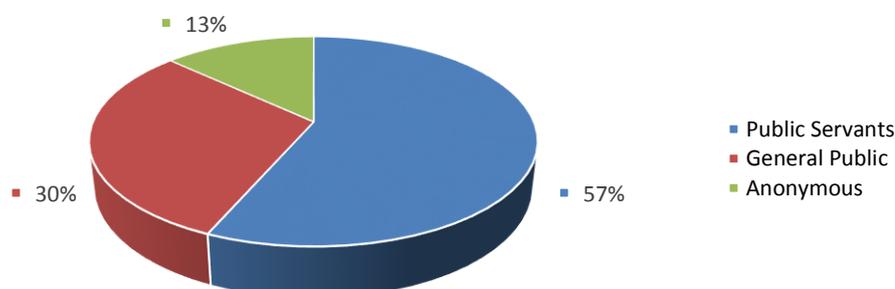
Disclosures by Region 3 year Comparison



Disclosures – by source

Allegations of improper conduct were received from both public officers and the general public. Disclosers have the option of remaining anonymous and most anonymous complaints are received via the online complaint form. However, many of those complainants who chose to be anonymous provided some means of contacting them (via email or phone) and ultimately identified themselves as their complaint progressed.

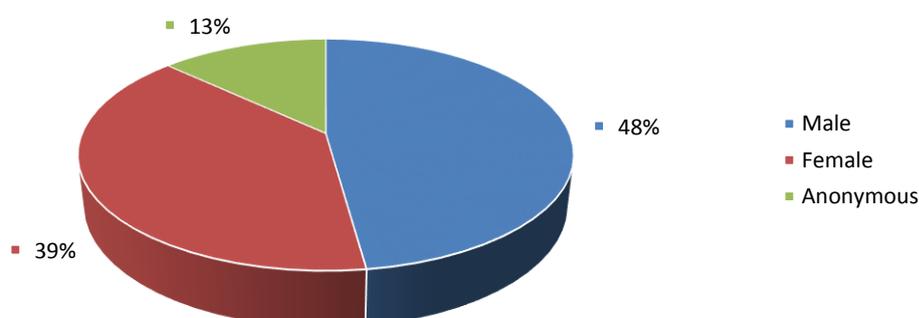
Disclosures by Source



Disclosures – by gender

Of the total number of disclosures handled during the reporting period, 48% were made by men, 39% by women, and 13% were anonymous complaints.

Disclosures by Gender



Public Interest Disclosures referred by the Speaker

In circumstances where improper conduct relates to a politician who is a member of the Northern Territory Legislative Assembly (an MLA), then the disclosure must be made to the Speaker of the Legislative Assembly who may refer the matter to the Commissioner for investigation under section 12(1) of the PID Act. In the 2016-17 reporting period, the Commissioner received no public interest disclosures from the Speaker of the Legislative Assembly. This is consistent with previous reporting periods, and in fact there has never been a referral from the Speaker.

Public Interest Disclosures handled and number resolved.

The Office has established Categories of Investigation (including reporting) as follows:

- Level 3 Investigation – estimated to occupy an investigator full-time for a period exceeding 160 hours
- Level 2 Investigation – estimated to occupy an investigator full-time for a period of 80 to 160 hours
- Level 1 Investigation – estimated to occupy an investigator full-time for a period not exceeding 80 hours

As at 30 June 2017, 46 disclosure files had been handled during the reporting period.

Of those matters, 32 disclosure files had been resolved and 14 remained active. A breakdown is as follows:

- 8 matters were assessed as public interest disclosures that required investigation. Of these:
 - 2 investigations were completed during the reporting period. One of these was a major (Level 3) investigations requiring considerable resources in excess of 400 hours. The other investigation completed was classified as a Level 2 investigation taking between 80 to 160 hours to complete. One of the

investigations completed also contained information of a criminal nature and that component was referred formally to the NT Police Force for further investigation;

- 6 other investigations are continuing.
- 9 matters were the subject of preliminary assessment/investigation but were ultimately referred to other bodies for investigation;
- 8 matters were still in the assessment stage; and
- 21 matters were assessed and ultimately rejected by the Commissioner on the grounds that they were not matters attracting the protections of the Act.



Referral of investigations to other bodies

Section 22 of the Act allows the Commissioner, when it is deemed appropriate to do so, to formally refer public interest disclosures to the Ombudsman, the Auditor-General, the Commissioner for Public Employment, the Commissioner of Police, the Children’s Commissioner or NT WorkSafe. The referral process is only undertaken after the matter has been assessed by this office and deemed to be sufficiently serious to be declared a public interest disclosure. Before a matter can be formally referred, the discloser must be given the opportunity to comment on the proposed course of action. The discloser's comments are considered by the Commissioner when making a decision to refer.

Once referred, the receiving body exercises its own powers of investigation and the PID Act no longer applies to the referred investigation. The discloser however, retains his or her protections against reprisal under the PID Act. Throughout the reporting period, the Commissioner made four formal referrals to the bodies listed above.

Informal Referrals

Some allegations received did not amount to "improper conduct" but were important enough to require further investigation. These matters were either referred to the Chief Executive of the public body in question or to another appropriate body. This step was only taken with the discloser’s consent.

Throughout the reporting period, the Commissioner used this informal process to refer:

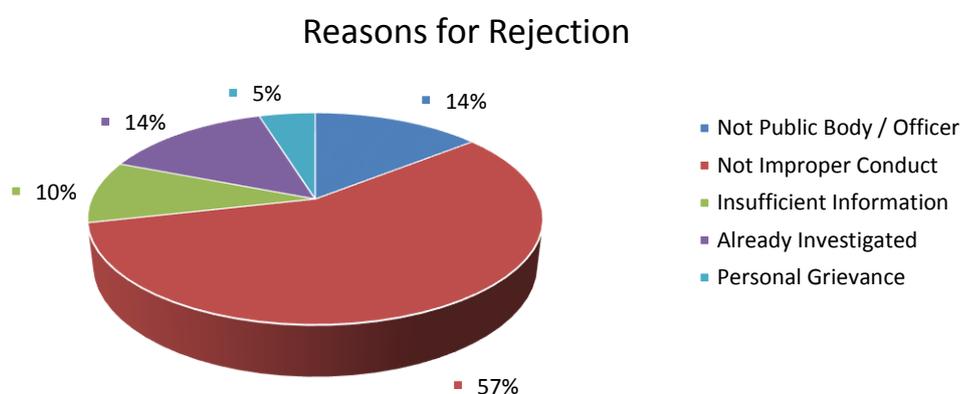
- 3 matters to the Department of Housing and Community Development;
- 1 matter to the Auditor General; and
- 1 matter to the Commissioner for Public Employment.

Number, type and reasons for not investigating Public Interest Disclosures

The assessment stage of any complaint is an important one. Some disclosure complaints can be dealt with promptly if, for example, they clearly fall outside the jurisdiction of the Office. Many others take considerable work before a decision can be made as to whether or not they should be investigated.

Of the 21 disclosures ultimately rejected or informally referred by the Commissioner:

- 57% were assessed as not involving 'improper conduct';
- 14% were assessed as not relating to a 'public officer' as defined by the Act;
- 14% had already been adequately investigated;
- 10% were unable to be assessed due to insufficient information being provided or obtainable; and
- 5% were assessed as personal or employment related grievances.



Reports under section 31(1)(a) of the Act

After completing an investigation, the Commissioner must report the findings to each responsible authority for the public body or public officer to whom the investigation relates. The Commissioner may (except in the case of a referred MLA investigation) make recommendations for action to be taken as a result of the findings. Two section 31(1)(a) reports containing recommendations were made during the reporting period.

Reports under section 32(2) of the Act

The Commissioner may make a public report on an investigation if it appears to the Commissioner that insufficient steps have been taken within a reasonable time to give effect to any recommendations for action made by the Commissioner. The report is provided to the Minister and must be tabled within six sitting days after the Minister receives it.

There have been no public reports made to the Minister during the reporting period. The reason for this is that Chief Executives have continued to comply with the recommendations of the Commissioner.



Freedom of Information and Privacy

Introduction

The *Information Act* ('the Act') is the Northern Territory legislation governing freedom of information, privacy, and public sector records management. The Act has been in force since 2003 and although a major review is overdue, there have been several discrete amendments over the years to deal with specific issues. The most recent amendments were made in the 2015/16 reporting period. They provide the Commissioner's staff with more flexibility to conduct mediation at any stage in the complaint process and this has led to the early resolution of a greater number of complaints. The changes also allow the Commissioner to refer a complaint back to the public sector organisation to reconsider their decision. This option is very useful when the Commissioner's staff consider that the organisation has failed to properly explain their decision to the complainant or if the organisation is best placed to resolve the complaint. In the occasional cases where a resolution is not possible at an earlier stage, the final hearing of FOI and privacy complaints received on or after 1 May 2016 are now referred to the Northern Territory Civil and Administrative Tribunal (NTCAT). During this reporting period, one FOI complaint was referred to NTCAT for hearing. (see <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nt/NTCAT//2017/469.html>).

The Information Commissioner continues to conduct hearings for complaints received before 1 May 2016. During 2016/17, two related decisions were published. (see <https://infocomm.nt.gov.au/resources/decisions-and-case-notes>)

Freedom of Information

The *Information Act* creates schemes which allow people to access government information (sometimes referred to as 'freedom of information' or FOI), and which protect the privacy of individuals by imposing controls and standards on public sector organisations that handle their information.

The Commissioner's role is to investigate and adjudicate complaints about decisions made under these schemes, and to provide education, advice, and general oversight of compliance with the schemes.

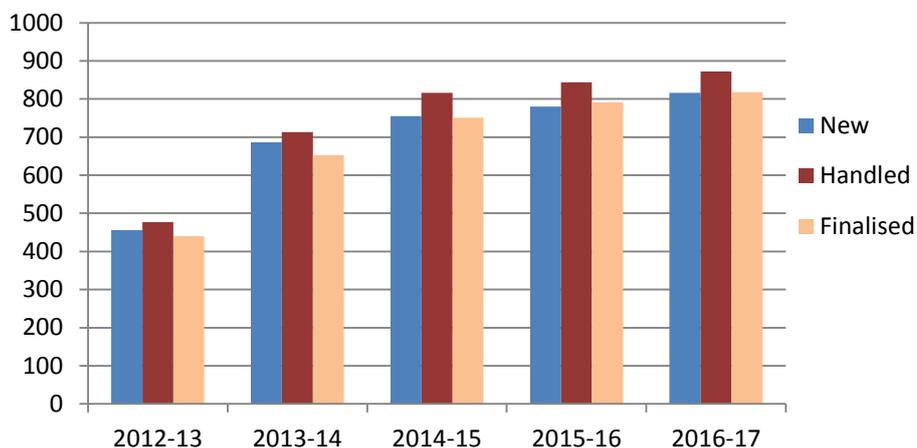
Section 98 of the *Information Act* requires the Commissioner to report annually to the Minister on the operations of the Office and the administration of the schemes. Other performance measures are published in Budget Paper No 3.

To meet these legislative requirements, the Office collects data about FOI access applications, correction applications and internal review applications from all NT public sector organisations. The raw data is available in the tables at Appendix 3. The information below gives a general overview of that data.

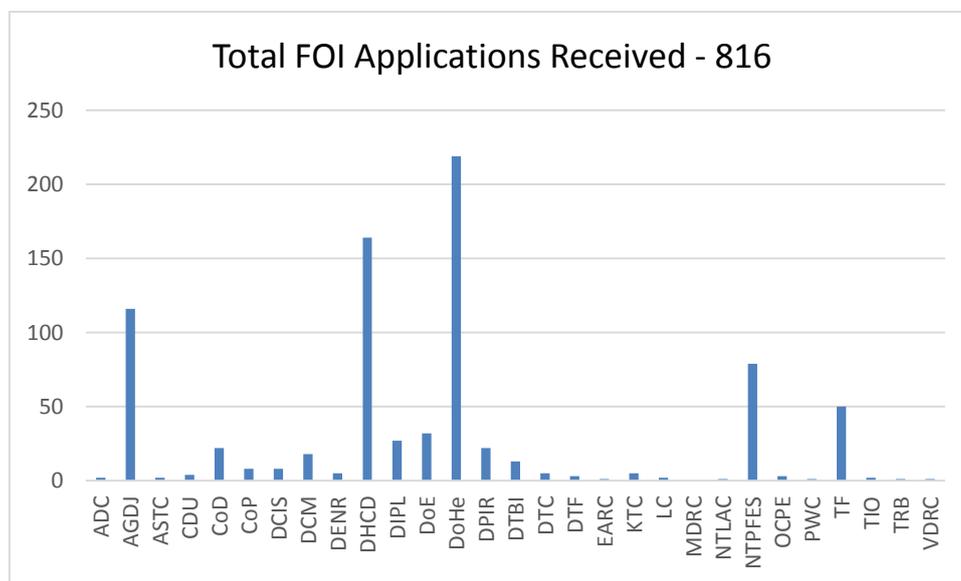
FOI applications received and handled by public sector organisations

816 new applications for information access were lodged across the public sector in this reporting period, representing a sustained trend of greater use of the freedom of information process over the past four years. With 56 FOI applications carried over from the previous reporting period, a total of 872 applications were handled.

FOI applications received and handled



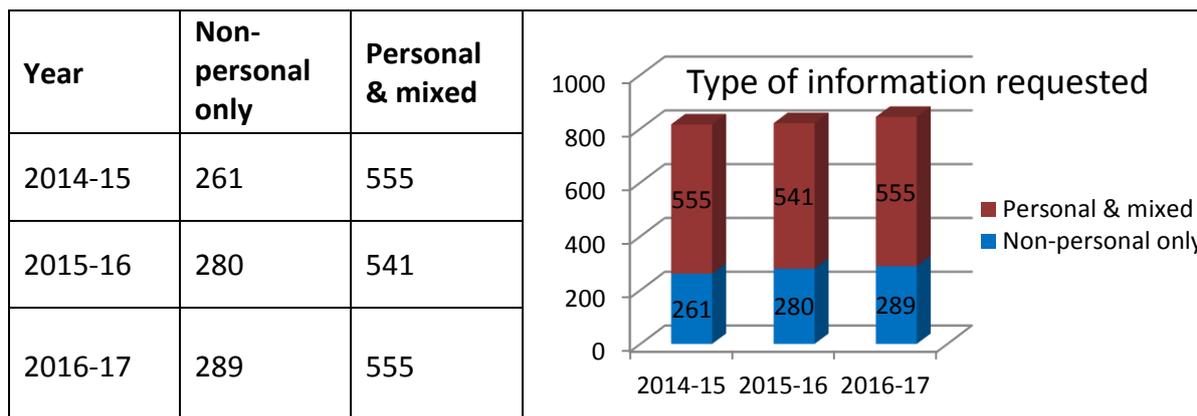
Organisations received almost twice as many FOI applications to process during this reporting period compared with 2012-13 numbers. Anecdotal evidence suggests that some organisations are continuing to feel the strain of this increased pressure on their FOI resources, particularly when the increase in requests for non-personal information means that the task of processing the applications can be more challenging.



By far the most applications continue to be made to NT Government Departments. The Department of Health received the highest number of applications of any public sector organisation (219 applications), followed by the Department of Housing and Community Development (164 applications). This year the Department of the Attorney-General and Justice (which now includes Correctional Services) also received a large number of applications (116 applications). With numbers a little lower than 2015/16, Northern Territory

Police Fire and Emergency Services received 79 applications. Smaller organisations such as Councils and independent statutory offices continue to receive a small but steady number of applications when considered in aggregate, but individually they may only receive one or two in any given year. This can cause resourcing difficulties for small organisations in terms of maintaining staff with the expertise and capacity to process applications when they are received.

Over the past 3 reporting periods, information has been obtained from public sector organisations on the number of applications lodged for access to purely non-personal information.

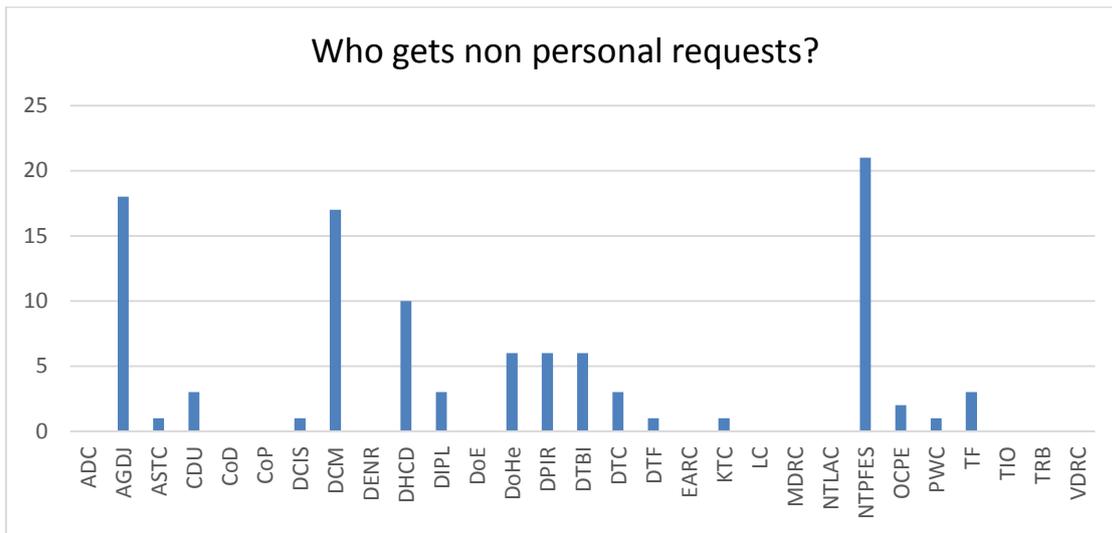


To explore this trend further, organisations were asked to indicate whether the applications they received for access to purely non-personal information were from applicants of a political, media, activist or lobby group nature. The intention was to gain insight into the extent to which the freedom of information provisions are currently being used by persons seeking information for political and policy reasons, as opposed to more private matters. Organisations indicated that 35% of applications for purely non-personal information were of this kind. Collection of this data also enables consistency of reporting at a national and international level on freedom of information trends.

Development of national metrics on public use of FOI

As part of Australia’s Open Government Partnership National Action Plan 2016, Australian Information Commissioners have agreed on six proposed “Metrics on Public Use of Freedom of Information Access Rights”. Collection of this data, coordinated by the Information and Privacy Commission of New South Wales, started in 2016 for the previous two years and will be fine-tuned over the coming years to report consistent FOI statistics collected across Australia and further afield. The dataset using the 2015/16 metrics is scheduled to be released in December 2017. The metrics will enable cross-jurisdictional comparison of the type of FOI applicant exercising their access rights, numbers of applications lodged, the proportion of information release and refusal, timeframes and review rates.

A pilot reporting dashboard was released in September 2017 and, while not all Information Commissioners record the exact same measures at this point, there is agreement to refine data collection and achieve comparable metrics across all Australian jurisdictions. The NT FOI statistical return for public sector organisations has been adjusted to include data which can be used for the national metrics dataset, although some jurisdictional variations will be evident in the first reporting period.



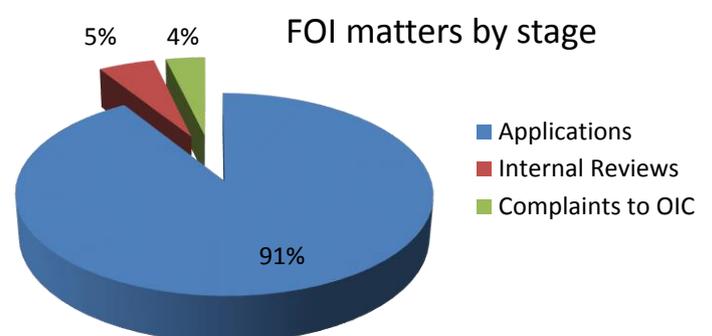
Applications for non-personal information were lodged by media organisations, political parties, lobby groups, and activist type organisations (notably environmental organisations). Proportionally high numbers of such applications were received by Northern Territory Police Fire and Emergency Services, the Department of the Attorney-General and Justice (including Correctional Services), the Department of the Chief Minister and the Department of Housing and Community Development.

Similar to previous years, the scheme in the Act which allows people to apply to correct their own personal information has rarely been utilised. Only 16 applications to correct personal information were received across the NT public sector this year.

FOI matters by stage

The vast majority of applications continue to be resolved by organisations at the initial application stage, with comparatively few matters reaching the stages of internal review by the organisation or external complaint to our Office. This year, 48 new internal review applications were lodged with various organisations, with two review applications open at the start of the year, totalling 50 reviews having been handled. Of these 50 reviews, only 19 matters came to the Office of the Commissioner as new complaints. Together with 16 open complaints handled by this Office, the graph below gives an overview of the proportion of applications, reviews and complaints handled during the 2016-17 reporting period:

Applications	91%	872
Internal Reviews	5%	50
Complaints to OIC	4%	35



Under recent amendments, organisations are now able to refer an application for internal review directly to the Information Commissioner to handle as a complaint. This year the

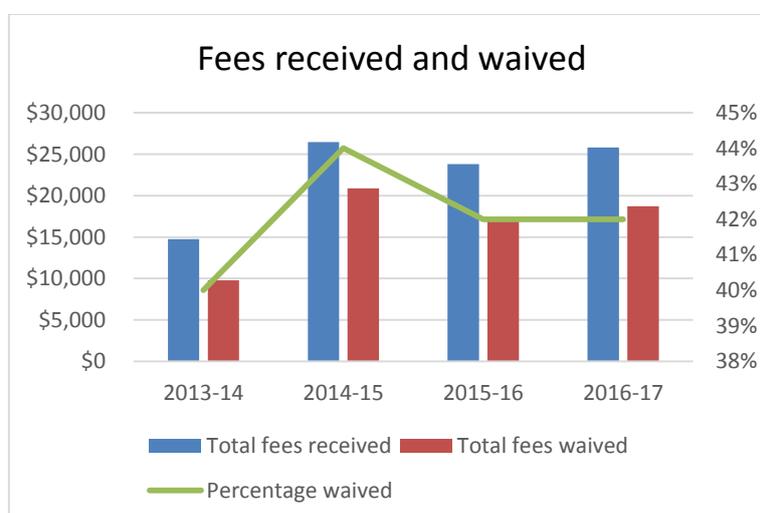
Commissioner received a total of three referral applications from the Department of Attorney-General and Justice (including Correctional Services), MacDonnell Regional Council and NT Police Fire and Emergency Services. Two of these referrals were accepted and dealt with by this Office and the third was returned to the organisation after discussions with the Information Officer about how best to deal with the matter.

Application and processing fees

The *Information Act* provides for the charging of application fees and processing fees. Similar to other jurisdictions, the maximum fees chargeable are set in legislation at a level well below that required for organisations to recover the costs of administering a freedom of information scheme. Rather, the fees are a safeguard against frivolous and vexatious applications, as they require an applicant to demonstrate their interest in obtaining the information by assisting with those administration costs. No application fees are chargeable for requests for purely personal information and organisations seem to rarely charge processing fees for such requests. Processing fees are also seldom charged if the request is small and straightforward. The resources required to collect fees in a large number of small matters would be uneconomic. For these reasons, it is difficult to comment accurately on the reasons for annual fluctuations in fees charged or waived but the figures in recent years seem relatively stable.

Comparative table: Fees received and waived

	Total fees received	Total fees waived	Percentage waived
2013-14	\$14,761	\$9,770	40%
2014-15	\$26,469	\$20,891	44%
2015-16	\$23,788	\$17,179	42%
2016-17	\$25,799	\$18,702	42%



On what grounds was information not released?

The *Information Act* provides a number of exemptions that may be used by organisations to withhold information from release. Table 4 in Appendix 3 provides details of the type of exemptions used. The most widely used exemptions in this reporting period were those aimed at protecting:

- privacy of third parties (section 56) – relied on by 15 organisations;
- non-commercial information confidentially obtained (section 55) – relied on by 9 organisations;
- commercial in confidence information (section 57) – relied on by 9 organisations;
- preservation of the system of justice (section 49) – relied on by 8 organisations.

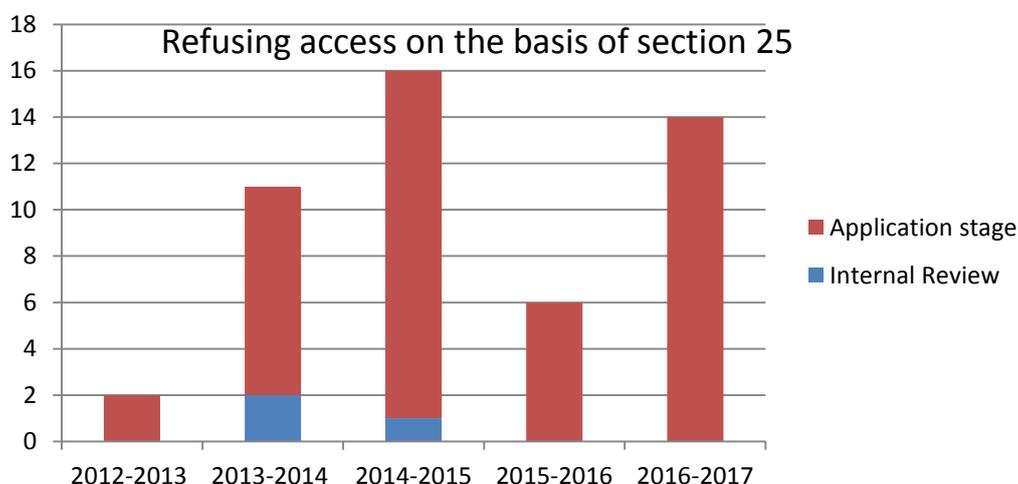
It is interesting to note that a large proportion of the information not disclosed is being withheld to protect the private or confidential information of individuals and businesses, rather than for reasons outlined in other exemptions available under the Act.

Refusal because of Unreasonable Interference with Operations – s 25

Section 25 of the Act allows public sector organisations to refuse to provide access to information sought by an applicant because providing access would unreasonably interfere with the operations of the organisation. Following a similar trend seen in larger jurisdictions in Australia, the internal resource pressures faced by public sector organisations has led to a more careful evaluation of the time they spend on some FOI applications. As a result, section 25 refusals by organisations have again increased: from 6 in 2015-16 to 14 in 2016-17. One final hearing decision on this issue dated 9 March 2016 is available at



<https://infocomm.nt.gov.au/resources/decisions-and-case-notes>



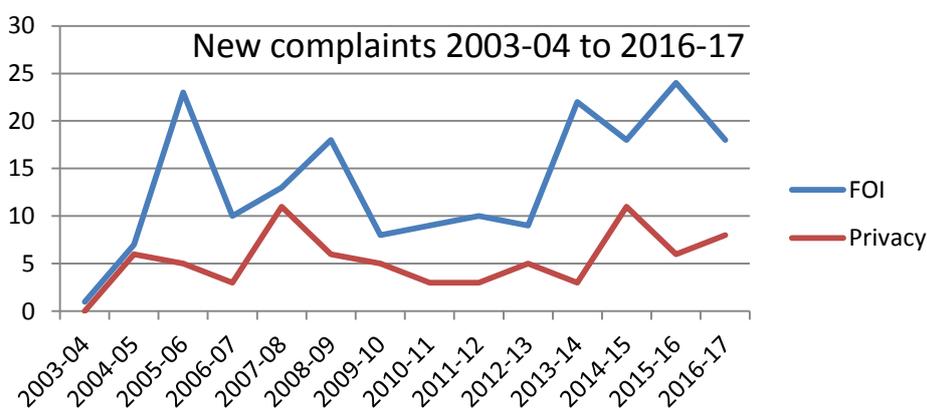
Number of FOI complaints and their outcome

This year, the Office of the Information Commissioner handled a total of 35 FOI complaints, including 19 new complaints and 16 carried over from the previous year. Of the 19 matters that were resolved in the reporting period, only 4 required formal hearings. The table below sets out the outcomes for FOI complaints in this reporting period.

FOI complaints to the Information Commissioner 2016-17										
PSO*	Carried Over	New Complaints	s39A	Handled	Not accepted	Resolved informally	Prima Facie	Mediation	Hearing	Open at year's end
AGDJ	1	2		3						3
CoD		1		1						
CoP		3		3		1				2
DoE	6			6		2			2	2
DoHe	3			3			3	3	2	
DPA		1		1						1
DPIR	2	1		3						3
DTBI		1		1			1			
MDRC		1		1		1				
NTDCS	1	2		3		1				2
NTEC	1			1						1
NTLAC	1			1			1			
NTPFES	1	4	1	6	3	2				1
TIO		2		2		1				1
TOTAL	16	18	1	35	3	8	5	3	4	16

* Refer to Appendix 3 for details of acronyms for organisations

The number of complaints received by the Commissioner's office varies from year to year, making it difficult to predict future trends. A comparison of the annual number of complaints from the start of the legislation to the current year demonstrates this variation.



The trend in privacy complaints is discussed in the privacy section.

The trend for FOI complaints seems to be upward despite a few 'dips' with a slight decline in the number of FOI complaints received in the current reporting period, as illustrated by the graph above.

FOI Case studies

The case studies of complaints this year reflect statutory decisions at a range of different stages in the Commissioner's process. When a complaint is first lodged, a decision has to be made as to whether it is a valid complaint which can be investigated, in accordance with section 106 of the Act. If a complaint is accepted, it is then investigated to determine if there is sufficient evidence to substantiate the complaint 'on its face' – this is known as a *prima facie* decision and does not involve weighing competing evidence or competing legal arguments where the law is unclear. If a complaint succeeds at *prima facie* stage and is not resolved at mediation, it is dealt with at a hearing, where the Hearing Commissioner or NTCAT make findings of fact and resolves competing interpretations of the law. A number of *prima facie* and hearing decisions are set out as Case Studies below. In each case, the public sector organisation is called the Respondent. Some facts may have been changed slightly to protect privacy.

A substantial, adverse effect on management of employees – section 53(c)

The Complainant was a health practitioner directed by the Respondent to cease all clinical duties because several cases of clinical concern had been identified. On the same day, the Respondent wrote to the Australian Health Practitioner Regulation Agency (AHPRA) to notify concerns about the clinical performance of the Complainant and the cessation of clinical duties. AHPRA advised the Complainant of its intention to impose conditions on the Complainant's registration in order to 'protect public health or safety' and invited submissions in response. The Complainant opted to provide certain undertakings to AHPRA rather than receive registration conditions. Those undertakings were published on AHPRA's medical practitioner register.

At a subsequent meeting with the Respondent, the Complainant was provided with a number of patient case notes and related medical records, but was not advised of the nature of any allegations, or to what the Complainant was being asked to respond. The following day, AHPRA wrote to the Complainant to advise that the Medical Board of Australia had decided to investigate 'issues identified' as to '*Whether or not the knowledge, skill or judgement possessed, or care exercised by, the practitioner in the practice of the...practitioner's health profession is, or may be, below the standard reasonably expected*' and seeking a written response. The Complainant's solicitor wrote to AHPRA setting out the substantial difficulties faced in attempting to ascertain and respond to the allegations against the Complainant and requesting a further opportunity to respond should the guesswork as to the nature of the allegations differ from the actual allegations.

The Complainant submitted an FOI application to the Respondent which decided that, of a total of 44 documents within scope of the application, 2 pages would be released in part and 2 pages in full and the others were exempt from disclosure under sections 53(c), 55(3)(a) and 55(3)(b)(ii) of the Act. The Complainant applied for Review of that decision, the result of which was to release 18 of the pages previously claimed to be exempt, and to exempt the remainder on the basis of section 53(c) of the Act. The Complainant subsequently lodged a complaint with this Office.

The Commissioner's delegate indicated that it did not appear reasonably likely that the disclosure of some further pages would have any effect on the management by the

Respondent of its officers or employees as required by section 53(c). In addition, while parts of the remaining information potentially attracted the exemption, it was unclear whether the effect on the management of the Respondent's employees would be substantial or adverse as required to qualify for the exemption.

In relation to public interest factors in favour of disclosure, the delegate considered that natural justice required that the Complainant know what allegations have been made in order to respond to them. The delegate found there was sufficient *prima facie* evidence to substantiate the matter complained of and referred it to mediation where the parties were able to resolve the complaint.

Information obtained from a business, commercial or financial undertaking - section 57(1)(b)

The Respondent organisation's governing legislation provided that a business may be subject to conditions including the provision of security. The calculation of the amount of security was to be determined by the Minister. The Respondent submitted that it was responsible for setting the value of the security, not the business undertaking in question. On this basis the delegate of the Commissioner found that the amount of the security was not information obtained by the Respondent from a business, commercial or financial undertaking. This meant that the exemption in section 57(1)(b) had no application, and there was no need to consider public interest factors raised by the parties. There was therefore sufficient *prima facie* evidence to substantiate the complaint which was referred to mediation. The matter did not settle and was subsequently referred to hearing before NTCAT. The NTCAT decision is published on the Austlii website as Decision Number [2017] NTCAT 469.

Application for Waiver of Fees - section 156(6)

The Complainant applied to access information relating to grants funding together with an application for waiver of fees under section 156(6) of the *Information Act*. The amount of fees was calculated by the Respondent to be \$812.50 for 32.5 hours' work at \$25 per hour. The Respondent provided a 25% reduction to \$18.75 per hour, decreasing the amount to \$609.37 for access to the information sought. Following a request for review, the Respondent wholly affirmed its original decision. On acceptance of the complaint, this Office attempted to resolve matters by asking the Respondent to confirm all documents located and to advise any public interest factors taken into account in making its decision. The Complainant was also asked to reduce the number of documents sought. The Respondent advised that three documents sought did not exist and that no public interest factors were considered in reaching their decision. After consideration, the Complainant advised that all 32 documents were required to satisfy the application, and so no reduction in scope was acceptable.

The Commissioner's delegate found that the Respondent may need to justify at hearing why locating the 32 documents took 17.5 hours searching as the figure raised a question as to whether there are suitable records management processes in place, and why it required 10 hours to consult 5 third parties given they appeared to be involved in the Respondent's own program. Additionally, the delegate identified evidence to support the Complainant's claim of financial hardship, but little to support a claim that accessing the documents would be in the general public interest or the interest of a substantial section of the public. Overall, the delegate found sufficient *prima facie* evidence to substantiate the Complainant's request for a waiver or further reduction of the fees quoted and referred the matter to mediation as a

pre-condition to proceedings before the NTCAT. The parties were able to come to an agreement before the mediation and settled the complaint.

Third Party objection to release of correspondence – s30; and exemptions in s49, s47, s55 and s56(1)(a) – (hearing decision)

Two Third Parties each complained to the Information Commissioner in the same terms objecting to the release of information contained in correspondence held by the Respondent to an FOI applicant. The complaints were dealt with jointly. Of the 93 pages of information proposed to be released by the Respondent, much was already held by the FOI applicant who then agreed to reduce the application by the information already held. The Complainants claimed that the information should not be released as it falls within a number of exemptions.

In relation to the exemption in section 49, the Hearing Commissioner held that there was no pending or imminent legal action and the criteria for exemption were not satisfied. The Complainants objected to release of documents on the ground that a submission had been made by the Complainants to a Senate Committee inquiry. In the *prima facie* decision, the delegate of the Commissioner assumed the relevant exemption was section 47. It was held that, just because the Complainants chose to attach copies of documents to a submission which they requested remain confidential, does not make them exempt from disclosure.

The Complainants maintained that their communication with the Respondent was private and should not be disclosed. The Hearing Commissioner considered that two possible exemptions could be identified. The first is that disclosure would be a breach of confidence for which a legal remedy could be obtained (section 55). The Hearing Commissioner held that a number of documents were not communicated in confidence nor received in circumstances that imparted an obligation of confidence. Other documents comprising allegations and complaints had been made not only to the Respondent but to the Chief Judge of the Local Court and would not be a breach of confidence for which a legal remedy could be obtained. The second exemption that may be considered is unreasonable interference with privacy (section 56(1)(a), and the Hearing Commissioner determined that the Respondent was correct to conclude that disclosure of the documents was not precluded by that section of the Act. The complaints were dismissed.

Unreasonable interference with a person's privacy - s56(1)(a) (hearing decision)

This Supplemental Hearing Decision dated 18 August 2016 (available online at <https://infocomm.nt.gov.au/resources/decisions-and-case-notes>) considered a number of issues including whether parts of an email that contained personal information about an individual should be published. The Respondent had earlier refused release of this information to the Complainant so no third party consultation to obtain the views of the individual had been undertaken by them. The Hearing Commissioner considered that the personal information should be released and arranged for the individual in question to be consulted regarding the proposed release. The submissions made by that party to the Hearing Commissioner persuaded him that to release the information in question would be an unreasonable interference with the individual's privacy (section 56(1)(a)) and that there were reasonable grounds for the Respondent's claim that disclosure would not be in the public interest pursuant to section 50(1) of the Act.



Privacy

The Office is the 'privacy watchdog' for the Northern Territory public sector. It investigates and adjudicates privacy complaints made against public sector organisations, provides education and policy advice to organisations and individuals regarding compliance with the Information Privacy Principles (IPPs), and considers applications by organisations for exemptions from certain aspects of the IPPs.

Number of privacy complaints and their outcome

While there has been a general increase in FOI complaints in recent years, the number of privacy complaints received has remained fairly steady. The Information Commissioner wishes to gather additional statistical information on broader privacy issues for future inclusion in annual reporting. Information will be sought from public sector organisations about actions taken that might have interfered with a person's privacy whether the subject of a complaint to the Commissioner or not. Gathering such data is in accordance with section 98(2)(a) of the *Information Act*.

Seven new privacy complaints¹ were received during this reporting period, and five complaints were carried over from 2015-16. Of the 12 complaints handled, six could not be accepted because they did not constitute a privacy complaint under the provisions of s104 of the *Information Act*. One of those complaints was rejected because the Complainant had failed to first request that the organisation resolve or rectify the matter – a prerequisite to a valid complaint. Another complaint was resolved by the parties during the acceptance stage. The four further complaints were rejected because the Complainant was unable to provide sufficient evidence for the Information Commissioner to be able accept them for investigation. The onus of proof in a privacy complaint is on the Complainant and before an organisation is asked to defend or explain its actions, there needs to be a clear indication of a breach.

Of the 6 remaining complaints handled during 2016/17, one was withdrawn, one resulted in a *prima facie* decision being made and one matter was decided at hearing. The remaining three were new complaints that were still being assessed as at 30 June 2017.

Overview of privacy complaints

Privacy complaints to the Information Commissioner 2016-17											
PSO	Carried Over	New complaints	New s39A	Handled	Not accepted	Resolved informally	Withdrawn	Prima Facie	Mediation	Hearing	Open at year's end
DHCD	0	1		1	1						
DoHe	3	4		7	2	1	1	1			3
DIPL	1	0		1						1	
DPIR	0	1		1	1						
NTPFES	1	1		2	2						
Total	5	7	0	12	6	1	1	1	0	1	3

¹ This number has been revised from the reported 8 complaints in the Budget Paper 3 (BP3) report due to an amendment that became evident at the time of recounting for the annual report. The Office will note this oversight at the start of the next year's BP3 reporting period.

Privacy Case Study

After investigation of a complaint, a delegate of the Commissioner makes a *prima facie* decision as to whether a privacy complaint should proceed to mediation as a precondition to hearing. If a matter is not settled at this stage it may be referred for hearing. If the complaint was made before 1 May 2016 the hearing must be conducted by the Commissioner. If the Commissioner is unable to act (e.g. if she has been involved in trying to resolve the matter), then the hearing is conducted by her delegate who is appointed by the Commissioner with the Minister's approval. If the complaint was made after 1 May 2016, then the Commissioner must refer it to the NT Civil and Administrative Tribunal (NTCAT) for hearing.

Many matters settle before hearing, but it can be useful to discuss the content of the *prima facie* decision to illustrate the kind of issues raised by a Complainant.

Inappropriate access by managers to employee's medical records - IPP 2 and IPP 4

The Complainant was a health practitioner employed by the Respondent who alleged two managers inappropriately accessed his electronic medical records although they never provided any direct or indirect care to him. Following the discovery of that access, the Complainant resigned his position and subsequently lodged a complaint with this Office. As no evidence could be identified to establish that a complaint about one of the managers had been made to the Respondent, the Commissioner's delegate found that this Office had no jurisdiction to deal with that aspect of the complaint.

In the course of the investigation of the complaint about the other manager, audit logs and access history reports were obtained showing that the Complainant's medical records had been accessed by the manager. Investigations established that the manager had accessed the Complainant's medical records on a day the Complainant was at work and became ill and on the following day when the Complainant was absent due to illness. However, the delegate found the access was for the purpose of creating a medical certificate which was standard practice management of the Complainant's medical records and was not in breach of Information Privacy Principle 2 – Use and Disclosure.

The delegate found that the Complainant had not established that the circumstances of a third instance of the manager accessing the Complainant's medical records provided sufficient *prima facie* evidence of a breach of IPP 2. In relation to an alleged breach of IPP 4 - Data Security, the delegate accepted the evidence of the Respondent about steps taken to protect the security of personal information it holds, to advise staff of the consequences of unauthorised viewing of patient records and to provide training in and authorised access to the electronic patient records system. On this basis the delegate found insufficient *prima facie* evidence of a breach of IPP 4.

Performance Measures

The performance of the Office against planned outcomes is measured against estimates, including those set out in Budget Paper 3.



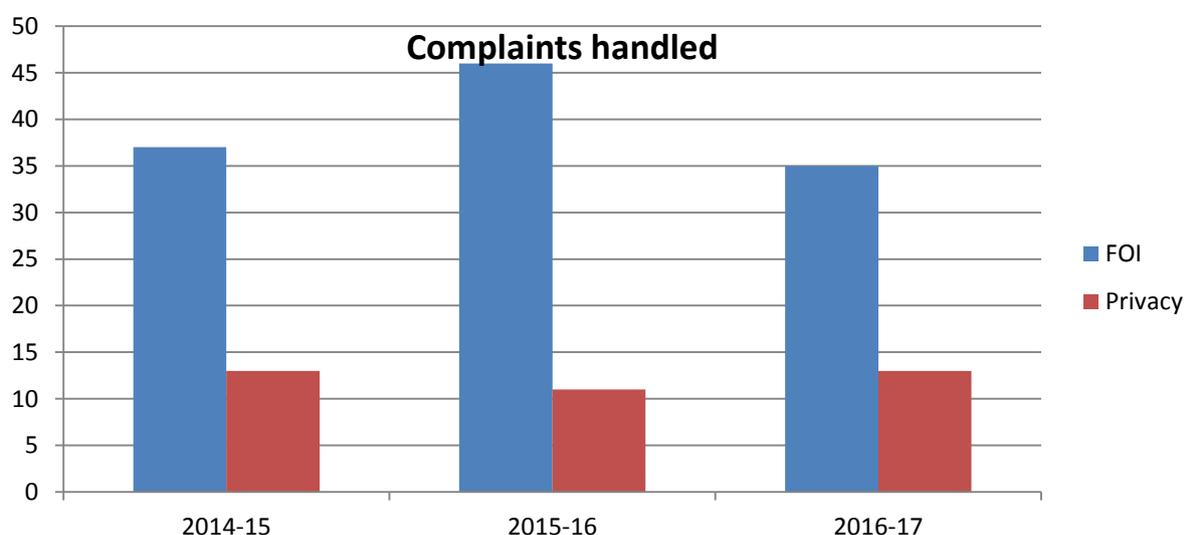
Quantity – complaints

Performance Measures		16-17 Estimate	16-17 Actual	17-18 Estimate
<i>Quantity</i>	Complaints & applications received by the OIC			
	-FOI	20	35*	20
	-Privacy	6	12**	6

* Includes 16 FOI complaints open at the start of the period

** Includes 5 privacy complaints open at the start of the period (note the need for a revised figure at the start of the next BP3 reporting period, as explained at the bottom of the privacy complaints table)

Full details of FOI complaints handled by this Office are reported on page 23 while Appendix 3 of this report contains the statistics of FOI applications from public sector organisations throughout the Northern Territory. The details of privacy complaints are reported on page 28.



Timeliness – resolving complaints within 12 months

Performance Measures		16-17 Estimate	16-17 Actual	17-18 Estimate
<i>Timeliness</i>	Complaints finalised within 12 months			
	-FOI	15	14	15
	-Privacy	4	7	4

† 14 out of 19 (or 74 %) FOI complaints were completed within the required time frame of 12 months.

In fact 9 out of those 14, (or 64% of the completions) were completed within 6 months

†† 7 out of 9 (or 78 %) privacy complaints were completed in the required time frame of 12 months.

The vast majority of matters are completed promptly and to the satisfaction of the parties. However, the Office does not always have control over the timeframes within which complaints are finalised. This year, the reasons for delay included a court suppression order preventing a Respondent from providing the documents sought under FOI, an extended investigation process in a matter, difficulties contacting a complainant, delays caused by staff turnover and extra time needed to prepare some matters for hearing.

Quantity – training and awareness

Performance Measures		16-17 Estimate	16-17 Actual	17-18 Estimate
<i>Quantity</i>	Awareness and training presentations			
	-Number of presentations	20	10	20
	-Number of participants	250	321	250

Quality – training, education and awareness

Performance Measures		16-17 Estimate	16-17 Actual	17-18 Estimate
<i>Quantity</i>	Stakeholder satisfaction with performance	80%	82%	80%

Participants and public sector organisations provide feedback following training sessions and public education events, ranking the quality of presentations on a five point scale. These results are then averaged and converted into a percentage.

Quantity – Policy Hours

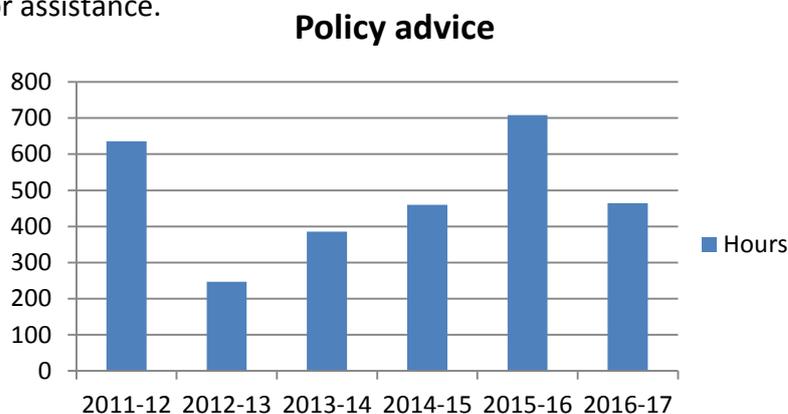
Performance Measures		16-17 Estimate	16-17 Actual	17-18 Estimate
<i>Quantity</i>	FOI and Privacy Policy hours (advices and audits)	650	464	650

Details of policy advice and assistance to public sector organisations in the Northern Territory during the current reporting period are reported below.

Policy Advice

One of the key roles of the Office is to provide expertise at an early stage so that public sector organisations' projects are designed in a way that treats personal information with care. Advice is largely provided on an on-request basis, so the amount of advice provided fluctuates depending on the types of initiatives being developed by organisations and the extent to which the Office is approached for assistance.

Year	Hours
2011-12	636
2012-13	247
2013-14	386
2014-15	460
2015-16	708
2016-17	464



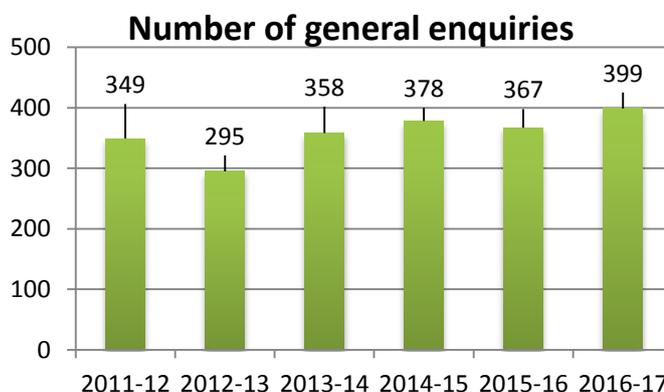
In addition to providing policy advice on request, the Office has developed a public guideline on the changes to the complaints system as a result of the NTCAT legislative amendments and a detailed guideline for Information Officers on the exemptions in the *Information Act*. Both are available at <https://infocomm.nt.gov.au/resources/guidelines>.

Privacy policy advice provided by this Office includes:

- Protecting the personal information of Territorians by ensuring that information-sharing initiatives comply with 'Privacy by Design' principles;
- Updating and improving privacy statements and policies;
- Assisting agencies to properly assess cloud computing options for service delivery and data storage to ensure that they minimise any privacy, security and legal risks;
- Providing advice to agencies on the legal requirements for protecting information that is transferred interstate and overseas; and
- Providing advice on the appropriate use of CCTV and its release under Freedom of Information.

General Enquiries

In addition to providing detailed policy advice to agencies, the Office receives general enquiries via telephone and email from public officers, community members and non-government organisations. During 2016-17, there were 361 such enquiries recorded. These numbers have always been a very conservative estimate only and new recording processes are being implemented in 2017/18 to provide a more accurate figure.

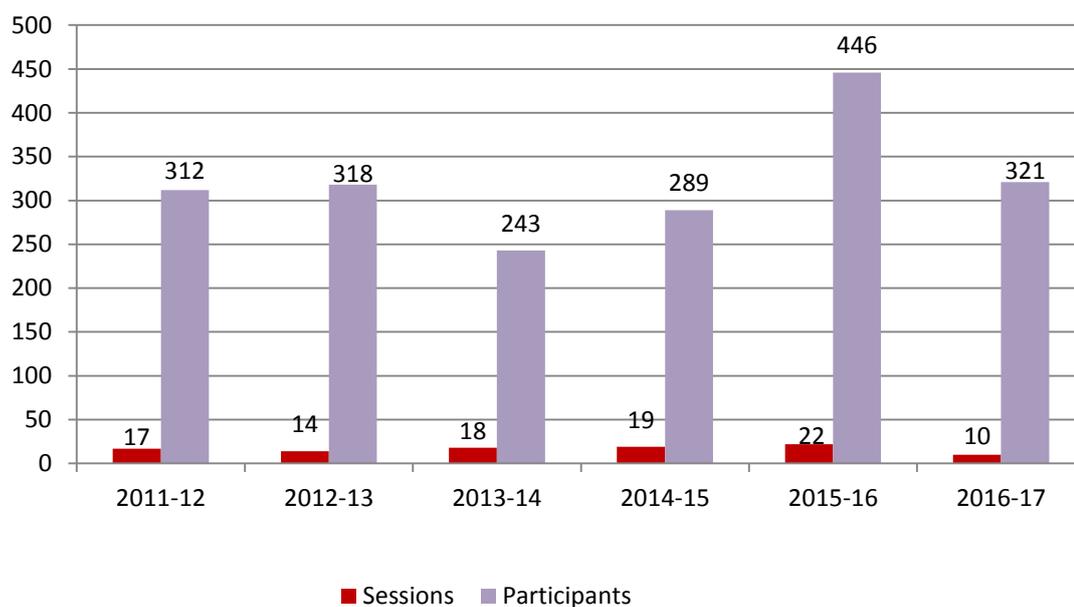


Awareness, education and training

During 2016-17, the Office organised 10 training sessions with a total of 321 participants as follows:

- **Training sessions** for large and small groups, tailored to specific needs. The Office delivered 8 sessions including departmental inductions, introductory training on FOI and/or privacy, specific topic & groups sessions, and graduate training.
- **An Information Forum** for public sector organisations was held in May 2017 and covered Cloud Computing issues. A panel of experts provided current advice on managing privacy, security and legal risks when using the Cloud to support or deliver NTG initiatives. Just over 100 officers attended this session.
- **Expert FOI training** for public officers from an interstate consultant in the form of a two-day course. This year, 43 officers attended the training.

Number of sessions



Changes to legislation in 2015/16 were the main reason for a spike in training in 2015-16.

Participants are invited to provide feedback on our training, and this forms the basis for rating one of our performance measures. Participant satisfaction this year was 82%, which is within the range for the past five year period (76% to 85%).

Community Awareness

Most of our community engagement takes place via our informative website (infocomm@nt.gov.au), brochures and freecall advice line (1800 005 610). Information stalls at community events are also an opportunity to provide information to the general public about the Office of the Information Commissioner, what we do and where we are. Community awareness events during the year included the Seniors Expo during Seniors Month in August 2016 and a promotional stand with other independent bodies at the NT Supreme Court Open Day on 17 September 2016.

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Privacy Awareness Week

Another annual initiative is Privacy Awareness Week (PAW), which the Office of the Information Commissioner celebrated from 15 to 21 May this year.

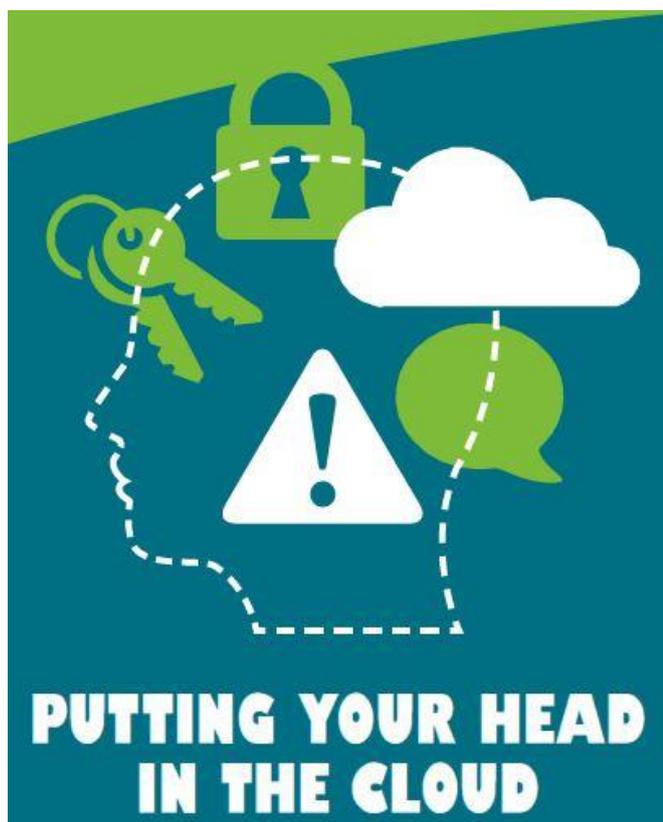


Promoting a privacy awareness theme through PAW is a joint initiative of privacy and data protection agencies across Asia Pacific who belong to the Asia Pacific Privacy Authorities (APPA) forum. The jointly adopted themes this year were “Share with Care” and “Trust and Transparency” and community education tools were produced to help promote privacy awareness.

Cloud Forum

The main event in the NT to promote Privacy Awareness Week (PAW) was a forum organised by this office titled “Putting your Head in the Cloud”. 101 guests attended the event to listen to a panel of experts and discuss with them best practice protocols for managing privacy, security and legal risks when using the cloud to support or deliver NTG information technology initiatives.

The Forum was well attended by Information Officers, Information Technology staff and legal and privacy practitioners.



The Office distributed to its stakeholders a 'Privacy tip of the day' throughout Privacy Awareness Week.

Resources from previous years can be accessed on <https://infocomm.nt.gov.au/resources/educational-resources> and <http://www.appaforum.org/paw/>



The poster features two hands holding puzzle pieces against a green background with a grid pattern. At the top, it says 'TRUST AND TRANSPARENCY'. Below that, a white box contains 'PRIVACY AWARENESS WEEK 15 - 21 May 2017'. Underneath is the heading 'Did you know?' followed by a sub-heading 'You can take 3 easy steps to take care of emails not getting away:'. A list of three tips follows: 1. Set a delay on outgoing emails... 2. Practice recalling an email... 3. Always be courteous. At the bottom right is the Information Commissioner Northern Territory logo, and at the bottom left is the URL <https://infocomm.nt.gov.au/>.

Asia Pacific Privacy Authorities Forum

Members of the Asia Pacific Privacy Authorities (APPA) Forum meet twice a year in one of the member countries. The Commissioner attended the 45th Forum in Singapore in July 2016.

Across the two days, APPA members and invited speakers discussed a range of contemporary topics such as data breach notification schemes; privacy law reform; facilitating compliance; legislative reforms; technology developments on data protection and privacy; and education and outreach efforts. Specific topics included how jurisdictions can balance data sharing and data protection, as well as updates on the EU General Data Protection Regulation (GDPR) given awareness of the importance of the need to know where, and how, personal data is being processed is extending across the globe.



Website

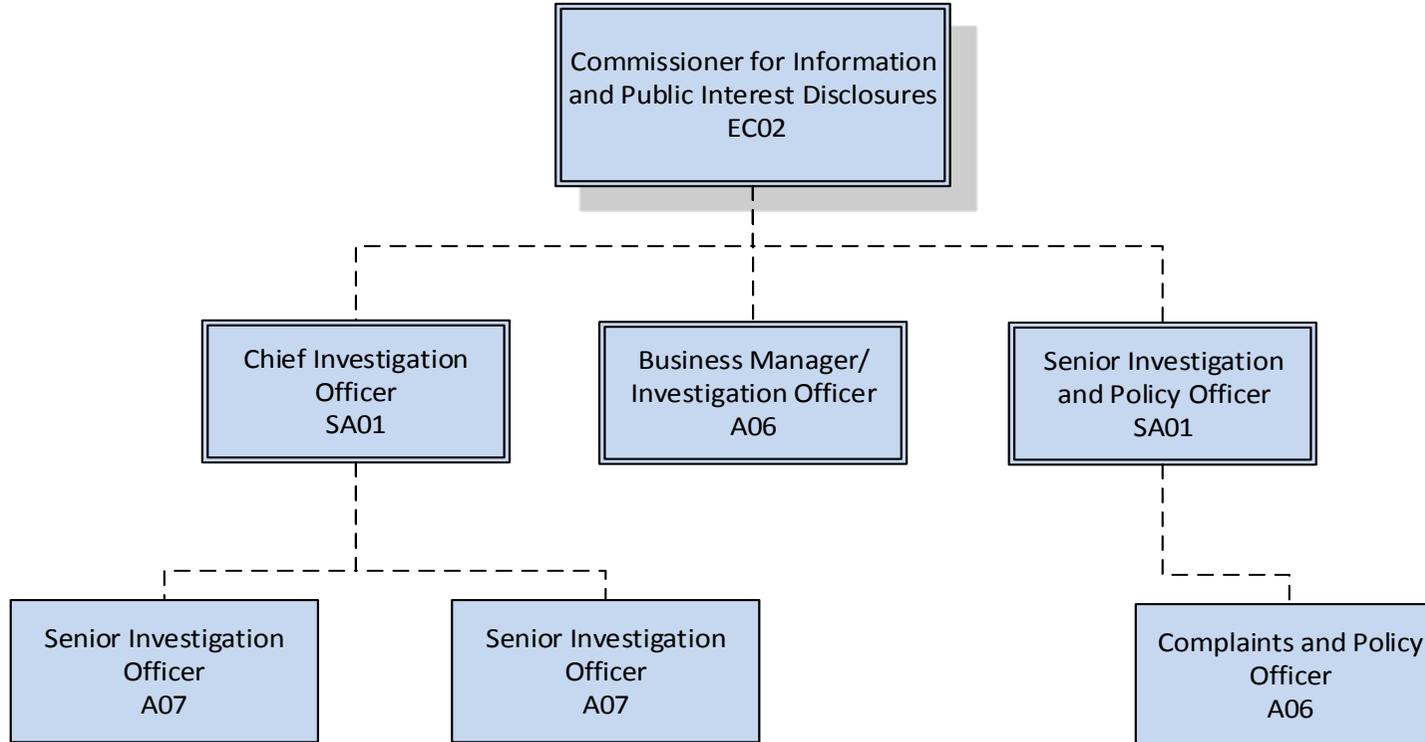
The website provides relevant information about forthcoming events, past annual reports, guidelines, summarised decisions, useful information to assist people making FOI or correction applications and FOI or privacy complaints to the Commissioner and more. For more information visit www.infocomm.nt.gov.au.

The screenshot shows the website header with the Information Commissioner Northern Territory logo, a search bar, and navigation links for Contact Us and Freecall 1800 005 610. The main navigation menu includes Freedom of Information, Privacy, Complaints, Correcting Information, Resources and Publications, and About Us. The breadcrumb trail reads: Office of the Information Commissioner > Privacy > Overview. The main heading is 'PRIVACY'. A left-hand sidebar lists various privacy topics with expandable icons: Overview, Information Privacy Principles, Collection of Information, Use and Disclosure, Management of Information, Openness, Make an Inquiry or Complaint, and Privacy Awareness Week. The main content area is titled 'Overview' and contains the following text: 'The Privacy scheme in the NT Information Act is about making sure that NT public sector organisations respect your privacy when they collect or handle personal information about you.' It then states: 'The rules for protecting your privacy are set out in 10 Information Privacy Principles (IPPs) that appear in the Schedule at the end of the Information Act. The requirements of the IPPs can be divided into four categories:' followed by a bulleted list: Collection of information, Use and Disclosure, Management of information, and Openness. Below this is a list of frequently asked questions with expandable icons: 'How do the IPPs work?', 'What if I think there has been a breach of my privacy?', 'What does it cost?', 'Are there any other limits on the privacy scheme?', 'What about Commonwealth agencies and private organisations?', and 'More Information'.

NEWS AND EVENTS

The screenshot shows three news items in a grid layout. Each item includes a timestamp, a title, a short description, and a 'READ ARTICLE' link with an expandable icon. The first item is 'Data Privacy Day - 28 January', dated '4 months ago', with the text: 'Consider how your personal information is used. Be part of the privacy movement that aims to be global.' The second item is 'Privacy Awareness Week', dated '4 months ago', with the text: 'Privacy Awareness Week 2017 (15 – 21 May)'. The third item is 'Right to Know Day - 28 September', dated '2 hours ago', with the text: 'International Right to Know Day is observed each year on September 28. This day raises public awareness of everyone's right to access government information.'

Organisational Chart as at 30 June 2017





APPENDICES

Appendix 1 - Statement of Financial Performance

For the year ended 30th June 2017

	2017	2016
	\$'000	\$'000
INCOME		
Appropriation - Output	865	943
Goods and Services Received Free of Charge	79	105
TOTAL INCOME	944	1 048
EXPENSES		
Employee Expenses	923	916
Administrative Expenses		
Purchase of Goods and Service		
Repairs, Maintenance and Property Management	8	4
Accommodation	3	3
Advertising	2	-
Agent Service Arrangements	1	3
Bank Charges	1	-
Communications	17	10
Consultants Fees ¹	13	141
Consumables / General Expenses	3	4
Entertainment / Hospitality	-	1
Information Technology Charges	42	43
IT Hardware and Software Expenses	1	9
Legal Expenses	52	-
Library Services	1	2
Marketing & Promotion	-	10
Medical/Dental Supply and Services	2	1
Memberships and Subscriptions	2	1
Motor Vehicle Expenses	3	5
Office Requisites and Stationery	2	5
Official Duty Fares	7	11
Other Equipment Expenses	9	12
Training and Study Expenses	11	8
Travelling Allowances	2	2
DCIS Services Free of Charge	79	105
TOTAL EXPENSES	1 183	1 296
NET SURPLUS / (DEFICIT)	(239)	(248)

Notes

The structural changes to the Agency as a consequence of the Machinery of Government changes resulted in a change in methodology for allocating output appropriation, indirect cost and corporate overheads' in 2016/17. Due to the extensive nature of these structural changes, the result for 2015/16 cannot be restated for comparative purposes and these allocations are not comparable.

¹ Consultant fees includes IT consultants fees

Appendix 2 – Performance Measures published in BP3

In 2014-15 the department consolidated and significantly reduced the number of performance indicators reported in Budget Paper No. 3. Those indicators that appear in Budget Paper No. 3 for 2016-17 have been back cast from 2014-15 and are shaded in blue in the following tables. The other indicators displayed below are not published in BP3 but are collected by this office to monitor performance.

Key deliverables	Current Year		Targets	Previous Years	
	2016-17 Estimate	2016-17 Actual	2017-18 Estimate	2015-16 Actual	2014-15 Actual
Complaints (incl carried over)	26	48	26	57	50
- FOI	20	35	20	46	37
- Privacy	6	12	6	11	13
Complaints finalised ¹	19	28	19	24	23
- FOI	15	19	15	20	15
- Privacy	4	9	4	4	8
Awareness and training	20	10	20	27	19
- Presentations	250	321	250	446	289
- Participants					
Training- participant satisfaction	80%	82%	80%	78%	81%
FOI and privacy -hrs (advice and audits)	650	464	650	708	463
Public interest disclosures	60	46	60	67	50
Awareness and training:	10	6	10	10	14
- Presentations	400	261	400	260	260
- participants					
Participant satisfaction	90%	96%	90%	96%	96%
Disclosures resolved or investigation reports presented to responsible authority within 6 months	70%	69%	70%	76%	56%
Community education and awareness sessions delivered ²	106	135 (16)	106	114 (37)	163 (38)

¹ Summarised measure previously report as separate key performance indicators.

² Combined measure for Independent Offices.

Appendix 3 – Statistics by Public Sector Organisations

Thirty-six out of some 95 public sector organisations received FOI applications during 2016-17. We much appreciate their co-operation and assistance in the timely and accurate reporting of the relevant information the Commissioner requires for this report.

Abbreviations for the public sector organisations used in the tables – please note that a number of organisations have changed since last year, following the machinery of government changes. **The changes are noted in blue:**

ADC	Anti-Discrimination Commission
AGDJ	Attorney-General and Justice (Dept of the). Includes the previous Department of Correctional Services
ASTC	Alice Springs Town Council
CDU	Charles Darwin University
CoD	City of Darwin
CoP	City of Palmerston
DCIS	Corporate and Information Services (Dept of)
DCM	Chief Minister (Dept of the)
DENR	Environment and Natural Resources (Dept of). Previously Land Resource Management
DHCD	Housing and Community Development (Dept of). Includes the previous departments of Local Government & Community Services and Housing Infrastructure, Planning and Logistics (Dept of). Includes the previous departments of Lands, Planning and the Environment, Transport, and Infrastructure
DIPL	Includes the previous departments of Lands, Planning and the Environment, Transport, and Infrastructure
DoE	Education (Dept of)
DoHe	Health (Dept of)
DPIR	Primary Industry and Resources (Dept of). Includes the previous departments of Mines and Energy, and Primary Industry and Fisheries
DTBI	Trade, Business and Innovation (Dept of). Previously Business (Dept of)
DTC	Tourism and Culture (Dept of). Includes the previous departments of Arts and Museums, Sport and Recreation, Tourism NT and the Parks and Wildlife Commission of the NT
DTF	Treasury and Finance (Dept of)
EARC	East Arnhem Regional Council
KTC	Katherine Town Council
LC	Litchfield Council
MDRC	MacDonnell Regional Council
NTLAC	NT Legal Aid Commission
NTPFES	NT Police, Fire and Emergency Services
OCPE	Office of the Commissioner for Public Employment
PWC	Power and Water Corporation
TF	Territory Families. Previously Children and Families (Dept of)
TIO	Territory Insurance Office
TRB	Teacher Registration Board of the Northern Territory
VDRC	Victoria Daly Regional Council

TABLE 1 – Information access applications and their outcome 2016-17

PSO	Lodged 16-17	Pending 15-16	Handled 16-17	Information released			With-drawn 16-17	Transfer 16-17	Finalised 16-17	Pending 16-17	Total Handled	Exemption used	Other reason	Personal info	Mixed info	Govt only	Media lobby etc	Back-up Tapes
				All	Part	None												
ADC	2	0	2	0	2	0	0	0	2	0	2	1	1	1	1	0	0	0
AGDJ	116	7	123	32	20	54	2	9	117	6	123	38	9	76	6	23	18	0
ASTC	2	0	2	1	0	1	0	0	2	0	2	0	1	1	0	1	1	0
CDU	4	0	4	4	0	0	0	0	0	0	4	0	0	0	0	1	3	0
CoD	22	1	23	4	17	1	0	0	22	1	23	17	0	4	0	19	0	0
CoP	8	0	8	2	1	5	0	0	8	0	8	1	4	0	6	2	0	0
DCIS	8	1	9	9	0	0	0	0	9	0	9	0	0	8	0	1	1	0
DCM	18	7	25	7	0	12	4	1	24	1	25	0	12	1	0	24	17	0
DENR	5	0	5	2	0	2	1	0	5	0	5	0	2	0	0	5	0	0
DHCD	164	1	165	4	134	23	4	0	165	0	165	138	0	152	2	11	10	0
DIPL	27	2	29	5	8	9	5	0	27	2	29	9	6	4	0	25	3	0
DoE	32	5	37	10	18	4	1	0	33	4	37	17	4	21	6	10	0	0
DoHe	219	10	229	128	28	56	7	1	220	9	229	18	9	153	3	73	6	0
DPIR	22	4	26	8	8	4	5	0	25	1	26	8	4	10	0	16	6	0
DTBI	13	0	13	1	4	4	0	2	11	2	13	2	2	0	1	12	6	0
DTC	5	2	7	3	2	1	0	0	6	1	7	2	1	1	0	6	3	0
DTF	3	0	3	0	0	2	0	0	2	1	3	1	2	1	0	2	1	0
EARC	1	0	1	0	1	0	0	0	1	0	1	1	0	0	0	0	0	0
KTC	5	0	5	4	1	0	0	0	5	0	5	1	0	0	0	5	1	0
LC	2	0	2	2	0	0	0	0	2	0	2	0	0	0	2	0	0	0
MDRC	0	1	1	1	0	0	0	0	1	0	1	0	0	0	1	0	0	0
NTLAC	1	0	1	1	0	0	0	0	1	0	1	0	0	1	0	0	0	0
NTPFES	79	9	88	14	30	30	7	1	82	6	88	39	21	25	18	45	21	0
OCPE	3	0	3	1	0	0	1	1	3	0	3	0	0	0	1	2	2	0
PWC	1	0	1	0	0	1	0	0	1	0	1	1	0	0	0	1	1	0
TF	50	6	56	3	21	16	1	0	41	15	56	17	23	42	3	5	3	0
TIO	2	0	2	1	1	0	0	0	2	0	2	1	0	2	0	0	0	0
TRB	1	0	1		1	0	0	0	0	1	1	1	0	1	0	0	0	0
VDRC	1	0	1	0	1	0	0	0	1	0	1	1	0	0	1	0	0	0
TOTAL	816	56	872	247	298	225	38	15	818	50	872	314	101	504	51	289	103	0

Note: PSOs sometimes experience confusion about the number of applications pending completion from the previous year.

TABLE 2 – Information correction applications and their outcome

PSO	Lodged	Pending	Handled	As requested	Other form	No correction	Withdrawn	finalised	Pending	Handled	Statement
DHCD	3	0	3	3	2	1	0	0	3	3	3
DoHe	10	1	11	1	0	9	0	10	1	11	0
NTPFES	2	0	2	2	0	0	0	2	0	2	0
TF	1	0	1	0	0	1	0	1	0	1	1
TOTALS	16	1	17	6	2	11	0	13	4	17	4

TABLE 3 – Internal Review applications and their outcome

PSO	Handled during 16-17				Finalised during 16-167*						Total Finalised 16-17	Pending End 2016-17
	Pending 15-16	Lodged 16-17	s103(2)*	Handled 16-17	Decision confirmed	Decision varied/revoked	More info located	More info released	Withdrawn 16-17	Referred s39A		
AGDJ	0	8	0	8	5	1	0	1	0	0	6	2
CoD	1	3	0	4	1	3	0	3	0	0	4	0
CoP	0	3	0	3	2	1	0	1	0	0	3	0
DCM	1	0	0	1	1	0	0	0	0	0	1	0
DHCD	0	3	0	3	2	1	0	1	0	0	3	0
DIPL	0	3	0	3	1	2	0	2	0	0	3	0
DoHe	0	7	0	7	2	4	1	1	0	0	6	1
DPIR	0	1	0	1	1	0	0	0	0	0	1	0
DTBI	0	3	0	3	2	1	0	1	0	0	3	0
DTF	0	1	0	1	1	0	0	0	0	0	1	0
MDRC	0	1	0	1	0	0	0	0	0	1	1	0
NTPFES	0	12	0	12	5	6	2	2	0	1	12	0
TF	0	2	0	2	2	0	0	0	0	0	2	0
TIO	0	1	0	1	1	0	0	0	0	0	1	0
TOTALS	2	48	0	50	26	19	3	12	0	2	47	3

* s103(2) reviews are an additional option for the OIC since the NTCAT amendments commenced on 1/5/16. The new provisions allow the Commissioner to refer a complaint back to the organisation and require it to conduct a further review of the decision. One such referral was discussed with a public sector organisation, but it concluded they did not wish to make any change at all to the wording or outcome of this particular review decision. As there seemed little point in forcing the organisation to conduct a further review, it was decided to provide the organisation with a formal preliminary view about this complaint.

TABLE 4 –Number of occasions where the following sections of the *Information Act* have been relied upon to refuse access to the requested information:

Exemptions relied on.																	At Application (App) and Review (Rev)					
PSO	s45(1) (a)	s45(1) (b)(c)	s46	s47	s48	s49	s49 AA	s49A, B, C	s51	s52	s53	s54	s55	s56	s57	s58	s25 App	s25 Rev	s27 App	s27 Rev	Othe r App	Othe r Rev
ADC								Y											1			
AGDJ			Y			Y		Y		Y	Y	Y		Y	Y		7		2		1	
ASTC							Y										1					
CDU																			3			
CoD														Y					1			
CoP														Y								
DCM																	1				12	
DHCD	Y		Y			Y		Y		Y			Y	Y	Y				19			
DIPL	Y									Y	Y			Y	Y		1		3		2	
DoE			Y			Y				Y	Y		Y	Y	Y				5		1	
DoHe																	1		26	2	6	1
DPIR			Y								Y			Y	Y		1		4			
DTBI	Y					Y		Y		Y			Y	Y	Y				2			
DTC	Y					Y		Y						Y								
DTF	Y																		1			
EARC											Y		Y	Y								
KTC													Y	Y	Y	Y			1			
LC																						
MDRC																						
NLAC																						
NTPFES			Y			Y		Y						Y					7	1	14	
OCPE																						
PWC															Y							
TF			Y		Y	Y		Y					Y	Y	Y		2		4	1	2	
TIO						Y				Y			Y	Y								
TRB														Y								
VDRC														Y								
TOTAL	5	0	6	0	1	8	1	7		6	5	1	7	16	9	1	14	0	79	4	38	1

TABLE 5 Application Fees received and reduced or waived

PSO	Number received	Amount received	Number waived	Amount waived
ADC	0	\$0.00	2	\$60.00
AGDJ	14	\$420.00	2	\$60.00
ASTC	1	\$30.00	0	\$0.00
CoD	18	\$540.00	0	\$0.00
CoP	7	\$210.00	1	\$30.00
DCIS	1	\$30.00	0	\$0.00
DCM	9	\$270.00	0	\$0.00
DENR	1	\$30.00	4	\$120.00
DHCD	10	\$300.00	1	\$30.00
DIPL	19	\$570.00	3	\$90.00
DoE	11	\$330.00	5	\$150.00
DoHe	38	\$1,140.00	0	\$0.00
DPIR	13	\$390.00	0	\$0.00
DTBI	13	\$390.00	0	\$0.00
DTC	3	\$90.00	2	\$60.00
DTF	1	\$30.00	0	\$0.00
EARC	1	\$30.00	0	\$0.00
KTC	3	\$90.00	2	\$60.00
LC	2	\$60.00	0	\$0.00
NTPFES	44	\$1,320.00	2	\$60.00
OCPE	2	\$60.00	0	\$0.00
PWC	1	\$30.00	0	\$0.00
TF	0	\$0.00	1	\$30.00
VDRC	1	\$30.00	0	\$0.00
TOTALS	213	\$6,390.00	25	\$750.00

TABLE 6 Processing Fees received and reduced or waived

PSO	Number received	Amount received	Number waived	Amount waived
ADC	0	\$0.00	0	\$0.00
AGDJ	30	\$563.10	1	\$325.00
ASTC	0	\$0.00	0	\$0.00
CoD	0	\$0.00	0	\$0.00
CoP	0	\$0.00	0	\$0.00
DCIS	0	\$0.00	0	\$0.00
DCM	4	\$1,575.00	0	\$0.00
DENR	0	\$0.00	0	\$0.00
DHCD	0	\$0.00	139	\$7,360.00
DIPL	8	\$2,567.30	4	\$1,725.38
DoE	7	\$3,760.00	6	\$587.00
DoHe	22	\$1,702.25	45	\$3,895.30
DPIR	8	\$5,722.31	1	\$212.92
DTBI	1	\$1,067.08	0	\$0.00
DTC	1	\$711.75	3	\$1,116.25
DTF	0	\$0.00	2	\$0.00
EARC	1	\$760.00	0	\$0.00
KTC	0	\$0.00	2	\$1,800.00
LC	1	\$50.00	0	\$0.00
NTPFES	13	\$850.00	31	\$930.00
OCPE	1	\$50.00	0	\$0.00
PWC	0	\$0.00	0	\$0.00
TF	0	\$0.00	1	\$0.00
VDRC	1	\$30.00	0	\$0.00
	98	\$19,408.79	235	\$17,951.85

TABLE 7 Total fees received and reduced

Total fees received	Total fees waived or reduced
\$0.00	\$60.00
\$983.10	\$385.00
\$30.00	\$0.00
\$540.00	\$0.00
\$210.00	\$30.00
\$30.00	\$0.00
\$1,845.00	\$0.00
\$30.00	\$120.00
\$300.00	\$7,390.00
\$3,137.30	\$1,815.38
\$4,090.00	\$737.00
\$2,842.25	\$3,895.30
\$6,112.31	\$212.92
\$1,457.08	\$0.00
\$801.75	\$1,176.25
\$30.00	\$0.00
\$790.00	\$0.00
\$90.00	\$1,860.00
\$110.00	\$0.00
\$2,170.00	\$990.00
\$110.00	\$0.00
\$30.00	\$0.00
\$0.00	\$30.00
\$60.00	\$0.00
\$25,798.79	\$18,701.85

Our Values

Integrity – Act ethically, openly, honestly, fairly and with accountability.

Courage – Provide robust reporting and advice and comment without fear or favour.

Professional Excellence – Work together to positively represent the Office.

Commitment – Strive to achieve the outcomes required by the *Information Act* and the *Public Interest Disclosure Act*.

Respect – Treat each other and all those who come into contact with this Office with respect.



**Office of the Commissioner for Public
Interest Disclosures**

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