



Annual Report 2003-2004

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OVERVIEW

Freedom of Information and Privacy - Independent oversight

The Information Commissioner is the independent officer appointed to oversee the **Freedom of Information (FOI)** and **Privacy** provisions of the *Information Act*.

FOI gives people the right to apply for access to information held by the NT government, and to correct personal information held by the government.



Peter Shoyer
Information Commissioner

Privacy is about controlling the way that the government collects and handles personal information.

The *Information Act* commenced on 1 July 2003, so this is the first Annual Report by the Information Commissioner. This report discusses what the Office of the Information Commissioner has done, and what NT government organisations have done, during the reporting year (from July 2003 to June 2004). The report includes statistics on FOI applications lodged with each public sector organisation during the year.

Because preparatory work by the Office and by public sector organisations carried out before 1 July 2003 has not previously been reported on, this report will also briefly describe that work.

Functions of the Information Commissioner

The Information Commissioner has a responsibility for dealing with complaints about FOI decisions and interference with privacy. However, the *Information Act* provided for that complaint function to be phased in. As a result, only one complaint — from a person objecting to disclosure of information — was accepted during 2003-04.

The Information Commissioner also has responsibility for promoting awareness and understanding of FOI and Privacy in the public sector and in the community, and providing various types of assistance to the public sector and community members in relation to FOI and Privacy.

Public sector awareness and assistance

Prior to July 2003, an Interdepartmental Committee and an Information Act Implementation Team were established by government to prepare for implementation. They carried out a substantial amount of work, including facilitation of the conduct of information audits, establishment of an *Information Act* website for the public sector, production of guidelines, and introductory training, including numerous joint presentations and forums with the Information Commissioner. Their work is much appreciated and assisted greatly in preparing for a smooth implementation phase.

The work of Information Officers charged with implementation within each organisation must also be acknowledged. While this Office has functions to oversee the FOI and Privacy provisions and to assist organisations, the bulk of the work that has been, and will continue to be, carried out is undertaken by officers within the individual public sector organisations that have responsibility for implementing the *Information Act*.

The initial focus of the Office was, therefore, on assisting public sector organisations to implement the FOI and Privacy provisions. The Office adopted various strategies to assist organisations in the implementation phase, including:

- presentations to, and forums with, various groups at all levels of government in various locations throughout the Territory — 19 before 1 July 2003, and 33 after
- attendance and presentations at regular meetings of a network of Information Officers from each organisation
- establishment of a general inquiries telephone and e-mail service to answer questions on FOI and Privacy
- preparation of 34 guidelines on FOI and Privacy issues
- creation of the Information Commissioner website to assist dissemination of information and obtain feedback
- provision of extensive policy assistance and input in relation to FOI and Privacy policies, and policies and legislation that raise accountability or privacy issues.

It was particularly notable during the year that the policy assistance function took up a very significant amount of the time and resources of the Office. The Office responded to numerous requests or invitations for advice or input in relation to accountability or privacy issues raised by a diverse range of policy and legislative proposals. Given the wide-ranging areas in relation to which those issues, and in particular privacy issues, arise, it is clear that this function will continue to place significant demands on office resources in the future.

Community awareness and assistance

From 1 July 2003, the emphasis placed by the Office on enhancing public awareness increased. Activities or facilities aimed at the community included:

- the general inquiries service, guidelines and website referred to above
- a stand-alone FOI and Privacy display at the Alice Springs, Tennant Creek, Katherine and Darwin shows
- presentations to numerous professional and community groups, including organisations like the Insurance Institute of Australia, the Australian Computer Society, the Association of Independent Schools and Rotary clubs
- media appearances and advertising in newspapers and on radio.

Freedom of information applications

As well as reporting on the performance of the Office during the reporting year, the *Information Act* requires the Commissioner to report on certain aspects of the performance of each public sector organisation.

In all, some 288 FOI applications were lodged with public sector organisations during the year, 284 of those being for access to information. In relation to those applications, some points of interest are:

- 48% were made to one organisation, the NT Police, Fire & Emergency Services
- 64% of applications sought access to personal information about the applicant
- overall, access was granted in full to some 14 599 pages, with access granted in full or in part to 80% of pages sought
- the total amount of application and processing fees charged by organisations was \$22 685.

Structure of the Report

The balance of this report expands on the above comments. Chapter 1 explains the functions of the Information Commissioner. Chapter 2 describes the achievements of the Office during the reporting year, while Chapter 3 sets out the structure of the Office and the resources used. Chapter 4 discusses how FOI and Privacy have been implemented by NT public sector organisations.

As this is the first Annual Report, detailed information on what FOI and Privacy mean is included in Appendix 1 and Appendix 2. Appendix 3 sets out financial statements for the Office. Appendix 4 lists various details about FOI applications made to each organisation.

Chapter 1

Information Commissioner – What we do

“establish an independent officeholder, the Information Commissioner, to oversee the freedom of information and privacy provisions of this Act”

Information Act, Objects, s.3(1)(c)

This Chapter briefly describes the different functions that the Office of the Information Commissioner (the OIC) has under the *Information Act*. Most of the functions are relevant to both the FOI and Privacy schemes. The Office’s functions are described under the following headings:

- **Awareness**
- **General Inquiries**
- **Complaints**
- **Policy Assistance/Input**
- **Investigations and Applications**
- **Improving our service**
- **Managing the office.**

The Office’s functions relate to Northern Territory public sector organisations (and, in some cases, contractors with those organisations). We do not cover Commonwealth organisations or the private sector.

Awareness

We promote understanding and awareness of FOI and Privacy protection in the Territory. We do this within the public sector and in the community generally.

What is Freedom of Information?

FOI is about giving you the right to seek access to the NT government information that you want. It improves government accountability and lets people find out what information government has about them.

An applicant must be given access to records containing the information they want unless disclosure would be against the public interest.

For more on FOI, see Appendix 1

What is Privacy?

Privacy is about controlling how NT government organisations collect, manage, use and disclose personal information about you.

It gives you the right to find out about how your information is collected and handled, and to complain about interference with your privacy.

For more on Privacy, see Appendix 2

We promote FOI and Privacy by activities like:

- publishing guidelines and brochures
- giving presentations to public sector, professional and community groups
- public displays, public comment and advertising
- our website: www.infocomm.nt.gov.au.

We are always looking for new ways to promote FOI and Privacy. We welcome contact from people who would like us to give a presentation or provide information in some other form.

General Inquiries

We have a General Inquiries service to help members of the public with specific questions. People can contact us by telephone (1800 005 610) or e-mail infocomm@nt.gov.au).

Inquiries may be as simple as wanting to know who within an organisation they need to contact. Or the inquirer may want more information about how a particular exemption works. We cannot give legal advice but we can assist with procedural questions and may be able to point people to relevant information like guidelines, websites, decisions or provisions of the *Information Act*.

We provide a similar General Inquiries service for public sector organisations.

Complaints

We can receive complaints from:

- (a) an applicant who objects to an FOI internal review decision to refuse access, to refuse correction or to charge a fee;
- (b) a third party who objects to an FOI decision to disclose information;
- (c) a person who is not satisfied with the response of an organisation to a privacy complaint.

The *Information Act* provides for a phased approach to the introduction of the FOI and Privacy schemes. During 2003/04, it was only possible to make a complaint to the Information Commissioner of the type described in paragraph (b) above. Type (a) complaints can be made in relation to internal reviews of initial FOI decisions made from 1 July 2004. Type (c) complaints can be made in relation to interference with privacy that occurs from 1 July 2004.

When we deal with a complaint, we are independent. We do not take sides. We do not represent complainants, government organisations or anyone else involved in a complaint. We do not give legal advice.

We do our best to resolve complaints informally. Our main aim is to assist the parties to find a solution that meets their needs and obligations. We inform the parties about the rights and limitations in the *Information Act*, so that they can make a realistic assessment of what they can hope to achieve from the formal processes under the Act. We explore with the parties alternatives for resolution both within and outside the processes in the Act. Our preferred outcome is for the parties to agree on a solution.

However, if an informal resolution cannot be reached, the Information Commissioner has the power to conduct a hearing and to make binding orders.

Policy Assistance/Input

We give assistance to government organisations that are developing or reviewing practices, policies or legislation. This includes policies about FOI or Privacy. It also includes practices, policies and legislation that raise FOI or Privacy issues. For example, a policy about use and disclosure of DNA information is likely to involve privacy issues.

We may offer assistance or input if an organisation consults us, if there is a public invitation for input, or if we otherwise become aware of a proposed policy or piece of legislation that might have FOI or Privacy implications.

There are two cases where an organisation must seek input from the Information Commissioner.

- A **Code of Practice** can be established to vary or supplement the Information Privacy Principles for a particular organisation. However, a draft Code must be recommended by the Commissioner before it can be submitted for approval to the Minister.
- The NT Archives Service prepares **Records Management Standards** to guide records management by public sector organisations. The Commissioner must be consulted to ensure consistency with the objects of the Act.

Investigations and applications

In relation to FOI, the Commissioner can (on application from an organisation) declare a person to be a **vexatious applicant**.

In relation to Privacy, the Commissioner can:

- conduct **privacy audits** of organisations;
- investigate whether a **compliance notice** should be issued requiring an organisation to take action to comply with the privacy principles or a code of practice;
- (on application from an organisation) issue a **grant of authorisation** to allow an organisation to depart from the privacy principles dealing with collection, use and disclosure.

Privacy Principles

There are 10 Information Privacy Principles that control how government collects and handles personal information. They cover:

1. Collection
2. Use and disclosure
3. Data quality
4. Data security
5. Openness
6. Access and correction
7. Identifiers
8. Anonymity
9. Transborder data flows
10. Sensitive information

Improving our service

So we can do our job well, we keep up-to-date with developments in FOI and Privacy in Australia and overseas by:

- regularly reviewing FOI and Privacy publications (including websites);
- keeping in touch with other accountability offices in Australia and New Zealand (for example, privacy commissioners, information commissioners and ombudsmen);
- being a part of various electronic FOI and Privacy networks throughout Australia; and
- attending conferences and forums about FOI and Privacy.

We also conduct surveys to make sure that our services are relevant and useful to public sector organisations and to members of the community.

Managing the Office

This includes general administration, staff management, record keeping, accounts and all the other things involved in running an office.

Chapter 2

Information Commissioner – What we did

This Chapter sets out what we achieved in 2003/04 in relation to each of the functions described in chapter 1.

Performance at a glance

<u>Activity</u>	<u>Number</u>
Presentations and displays to government and the community	56
Publications produced	34
General inquiries dealt with	319
Cost per general inquiry	\$24

Other highlights

- Establishment of the Office of the Information Commissioner
- Creation of a public internet website with over 40 pages
- Conduct of an FOI and Privacy display at the Alice Springs, Tennant Creek, Katherine and Darwin shows

Prior to the start of the *Information Act* on 1 July 2003, a significant amount of work was undertaken in preparation for the Act by an Interdepartmental Committee and the Information Act Implementation Team, co-ordinated by the Department of Justice. A large number of training sessions were conducted in various centres throughout the Territory, and a network of Information Officers established.

The Information Commissioner took up Office in March 2003 and worked with the Committee and the Implementation Team to promote awareness and understanding of FOI and Privacy in the public sector. In the period before 1 July 2003, the Commissioner conducted or took part in 21 presentations and forums, many of which were conducted jointly with, or facilitated by, Implementation Team members.

Awareness

Presentations. The Office conducted 56 presentations and displays during the year at various centres, the great majority by the Information Commissioner. Presentations were conducted at all levels within the public sector.

A large number of presentations were provided at an introductory level for staff who expressed interest in FOI and Privacy. Surveys of attendees showed a high level of satisfaction, with 91% giving overall ratings of 'Excellent' (19%) or 'Good' (72%). (Other options 'Adequate', 9% - 'Poor', nil.)

The Information Commissioner and staff of the Office also regularly attended monthly Information Officer meetings, and gave presentations.

Interest in FOI and Privacy was also shown by a variety of community and professional groups. Community and professional groups to whom presentations were made included:

- the Insurance Institute of Australia
- the Australian Institute of Administrative Lawyers national forum
- the Australian Computer Society
- the Association of Independent Schools
- the Australian Human Resources Institute
- Rotary clubs
- the Industrial Relations Society
- the Records Management Association of Australia
- the Law Society.



Banners used at displays and presentations

Displays. In July 2003, the Office conducted a Freedom of Information and Privacy stand at the Alice Springs, Tennant Creek, Katherine and Darwin shows. This provided an excellent opportunity to publicise the commencement of the *Information Act*, and for the Commissioner to meet and discuss with community members in each centre issues relating to FOI and Privacy.

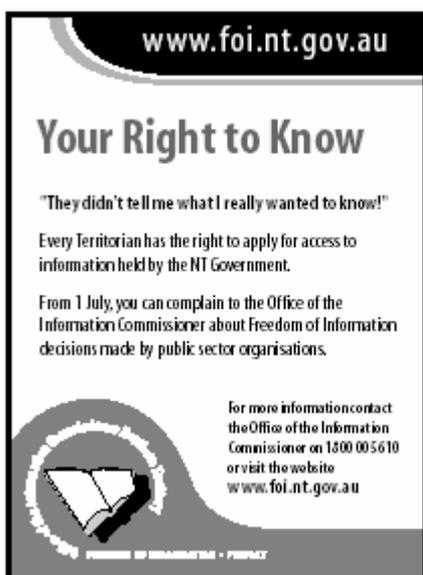


Stall at the 2003 Show Circuit

Guidelines. The Office produced 34 guidelines dealing with topics like:

- basic explanations of how the FOI process works, what it costs and how to make an FOI application
- more detailed information about the 'public interest' and exemptions from disclosure under the Act
- alternatives to the FOI process that are already available
- basic explanations of the Information Privacy Principles, and how to complain or inquire about privacy
- the Information Commissioner's approach to dealing with complaints
- research sources that discuss FOI and Privacy.

Media and advertising. The Information Commissioner undertook a number of media appearances promoting awareness about FOI and Privacy. Advertisements were placed in various newspapers throughout the Territory, and in June a newspaper and radio advertising campaign was conducted throughout the Territory.



Newspaper advertising campaign 2004

Website. An Information Commissioner website was established as a primary means of disseminating detailed information about FOI and Privacy in the Territory. It contains over 40 pages of publicly available information about FOI and Privacy, and contains links to other FOI, Privacy and Records Management sites.

The website was launched in mid-February 2004. By the end of June 2004, there had been just under 4 000 visits to the site, with approximately 15 000 pages viewed.

The Information Commissioner website can be accessed through the NT government website or at any of the following addresses:

www.infocomm.nt.gov.au

www.privacy.nt.gov.au

www.foi.nt.gov.au

General Inquiries

The Office publicised details of its freecall line, e-mail address and website by newspaper and radio advertisements, multiple telephone book entries, presentations and listings in various government directories.

Our General Inquiries service responded to 319 inquiries from members of the public and from public sector staff. Some of the questions asked included:

- Can someone overseas lodge an FOI application?
- Is a blood sample a "record" held by a public sector organisation?

- Who do I contact to obtain information about me held by NT Police?
- I have obtained information under FOI and it's wrong. How do I correct it?
- If a school takes photos of students and displays them for purchase, is that a Privacy breach?

Complaints

As noted in Chapter 1, the *Information Act* provides for a phased approach to the introduction of the FOI and Privacy schemes. During 2003-2004, FOI applications and Privacy complaints could be made to public sector organisations but there was only limited scope for complaint to the Information Commissioner.

The only type of complaint allowed to the Office of the Information Commissioner was a complaint by a person who objected to an FOI decision to disclose information.

One complaint was received from a third party objecting to disclosure of information. That complaint was not finalised at 30 June 2004.

The Office has prepared for the advent of complaints by developing systems for receiving and managing complaints.

Future Annual Reports will contain detailed statistical information about complaints received and dealt with.

Policy Assistance/Input

General policy assistance/input. A large proportion of the Office's workload during the year was taken up with providing assistance or input in the development of policy or legislation by government.

Much of that input was provided directly to NT government organisations. However, input was also provided:

- for the purposes of independent reviews of Territory policies or legislation
- for the purposes of reviews of Commonwealth policies or legislation that may impact on Territorians
- in response to policy or legislative proposals relating to cross-border or cross-jurisdictional issues.

Issues that the Office addressed (either individually or in co-operation with other privacy commissioners and ombudsmen) included:

- Cross-border law enforcement arrangements
- Accountability mechanisms for cross-border law enforcement
- Data cleansing schemes
- Privacy of employee records
- Access to the Commonwealth electoral roll
- Establishment of an Independent Electoral Commission in the Territory
- Forensic procedures required to deal with overseas incidents
- Establishment of an Environmental Protection Authority in the Territory.

Codes of Practice. A Code of Practice can be established to vary or supplement the Information Privacy Principles for a particular organisation. However, a draft Code must be recommended by the Commissioner before it can be submitted for approval to the Minister. No draft Codes of Practice were submitted to the Office during the reporting year.

Records Management. The NT Archives Service prepares Records Management Standards to guide records management by public sector organisations. The Commissioner must be consulted to ensure consistency with the objects of the Act. The Commissioner considered and endorsed a number of draft Records Management Standards.

Investigations and applications

This function did not take up a significant part of the Office's resources, although some time was spent responding to preliminary inquiries and developing guidelines.

Privacy audits. No privacy audits were conducted during 2003-04, as the focus of efforts of the Office was on promoting awareness of this new legislation.

Compliance notices. The Commissioner can, in limited circumstances, issue a compliance notice requiring an organisation to take action to comply with the privacy principles or a code of practice. No compliance notices were issued during the year.

Grants of authorisation. The Commissioner can, on application from an organisation, issue a grant of authorisation to allow the organisation to depart from the privacy principles dealing with collection, use and disclosure. No applications were received from organisations during the year.

Vexatious applicants. The Commissioner can, on application from an organisation, declare a person a vexatious applicant for FOI purposes. No applications were received from organisations during the year.

Improving our service

A significant part of the work involved in establishing any office lies in developing access to reference materials and developing contacts in other jurisdictions who can help the office to avoid constantly “re-inventing the wheel”.

This has been very true of establishment of the OIC because there is a wealth of material in other jurisdictions that can be of assistance in administration of both the FOI and Privacy provisions of the Act. That information can never replace independent consideration and assessment of Territory legislation in Territory circumstances but it certainly provides a valuable starting point.

With regard to Privacy, the assistance of staff of the offices of the privacy commissioners at the federal level and in Victoria, New South Wales, and New Zealand has been greatly appreciated. They have generously contributed a considerable amount of reference materials and their time to discuss issues of significance. In addition to maintaining telephone and e-mail contact, the Commissioner was able to attend one meeting of the bi-annual forum of Privacy Authorities of New Zealand and Australia.

With regard to FOI, the Commissioner maintained contact with officers in South Australia, Western Australia and Queensland.

In addition, the Office arranged to have ongoing access to FOI or Privacy networks at the federal level and in New South Wales and South Australia.

The Office also sought and obtained accreditation to the International Conference of Data Protection and Privacy Commissioners. In 2003, the Annual Conference was held in Sydney. The Commissioner attended and made contact with privacy commissioners and staff from many of the over 50 nations that now have privacy laws in place.

We continue to develop a library of reference materials, including books, articles and decisions from other jurisdictions. We regularly review the output of privacy networks and websites to update our materials. We have developed a database to enable easy searching of those materials.

In order to improve our level of expertise in relation to dispute resolution, one staff member attended conciliation training in Sydney and the 7th National Mediation Conference in Darwin.

Agency survey. A survey of Information Officers was conducted to establish levels of satisfaction by organisations with the services offered during the reporting period. The survey was valuable because it provided feedback on the level of satisfaction with the Office's performance, and pointed to a number of areas where organisations are interested in receiving additional assistance in the future.

Because of the limited number of respondents, the results of the survey should be viewed with some caution. To the extent that they can be relied on, they are largely positive. Overall, 92% of respondents gave the service provided by the Office a rating of 'Excellent' (25%) or 'Very Good' (67%). (Other choices were Adequate, 8%, Poor, nil and Very Poor, nil.)

Over one third of respondents rated the Information Commissioner website as 'Very Easy' to understand, with 'Very Useful' information. All other responses rated the website as 'Easy' to understand and 'Useful'.

In relation to OIC guidelines, the General Inquiry service, and OIC training and presentations, over 90% of respondents in each case gave ratings of 'Useful' or 'Very Useful' (excluding respondents who answered 'Don't Know'.)

Managing the Office

In addition to the many tasks that are involved in the ongoing management of an office, the reporting year saw the need to finalise the Office's establishment phase. This involved securing necessary accommodation, facilities and services.

Initially, the Office operated from an area made available by the Anti-Discrimination Commission (the ADC). Office space adjoining the ADC was secured in late 2003, to enable collocation arrangements (discussed in Chapter 3) to continue.

Existing furniture and equipment provided by the ADC and the Department of Justice for use by the Office was supplemented with new goods where necessary.

Other aspects of this function undertaken during the year include business planning, financial planning and management, human resources management, and information technology management.

Chapter 3

Information Commissioner – Who we are

The inaugural Information Commissioner for the Northern Territory is Peter Shoyer. He was appointed for a 5 year term from 1 July 2003. The Commissioner has over 10 years experience in dealing with freedom of information appeals.



Staff of the Office

The Commissioner is supported by the staff of the Office of the Information Commissioner (the OIC), who are employees under the *Public Sector Employment and Management Act*.

The full-time staff of the Office in 2003-04 comprised an Assistant to the Commissioner and, from January 2004, a Complaints Officer / Mediator.

In addition, the Office contributed to the costs of, and used the services of, an Office Manager and a Receptionist employed by the Anti-Discrimination Commission (the ADC), as part of a collocation arrangement.

Thanks and appreciation goes out to staff of the Office during the year, Somsong Albert, Shirley Gotting, Caroline Heske, Rhonda Prestidge and Colleen Atkinson.

Collocation

Section 97 of the *Information Act* provides for the sharing of staff and physical resources of another statutory office. From its outset, the OIC has been collocated with the ADC in an effort to optimise resource use.

Under the arrangement, there is sharing of training, conference and hearing rooms, some administrative staff and equipment.

The assistance of the ADC during the establishment phase of the OIC, and the continuing goodwill and co-operation of the ADC with staff of the OIC is gratefully acknowledged.

However, it is important to note that both offices maintain completely separate filing systems in relation to inquiries and complaints. A member of staff of the ADC may take contact details in order to have an OIC staff member return a call but otherwise personal information obtained in relation to inquiries and complaints about FOI or Privacy is not shared between the offices.

The OIC and ADC are exploring the potential for sharing of professional resources in the future, should circumstances suggest that additional resource savings can be made. However, members of the community should rest assured that such sharing will only be undertaken in circumstances where adequate measures have been developed to protect against the potential for conflict of interests and the potential for interference with individual privacy.

Corporate functions

The Office also received considerable support from divisions of the Department of Justice (DOJ), particularly the Corporate and Strategic Services Division, and from the Department of Corporate and Information Services (DCIS), in relation to property management, information technology support, financial planning and management and human resources management. That support has been integral to the establishment and running of the Office in 2003/04.

Finance

The overall operating expenses for the Office in 2003/04 totalled \$440 000. This included an allocation of expenses for DOJ and DCIS services.

Financial statements for 2003/04 are included at Appendix 3 to this Report.

More information about the Office?

More information about the Office and about FOI and Privacy can be obtained by visiting our website: www.infocomm.nt.gov.au. Our Privacy Policy and Information Statement are available on the website, or you can contact our office.

Contact details

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Chapter 4

FOI and Privacy in the Territory – The first year

IN BRIEF

- The *Information Act* commenced on 1 July 2003.
- Each public sector organisation is required to respond to applications for access to information it holds, and correction of personal information.
- Each organisation must comply with the Information Privacy Principles and deal with complaints about breaches of privacy.
- Most organisations have appointed Information Officers to deal with FOI applications and Privacy inquiries.
- 284 FOI access applications were lodged, almost half of them with NT Police, Fire and Emergency Services.
- Access was granted in full to 14 599 pages of information, with edited access given to a further 1 766 pages. Access was refused in full to 4 184 pages.

A promising start

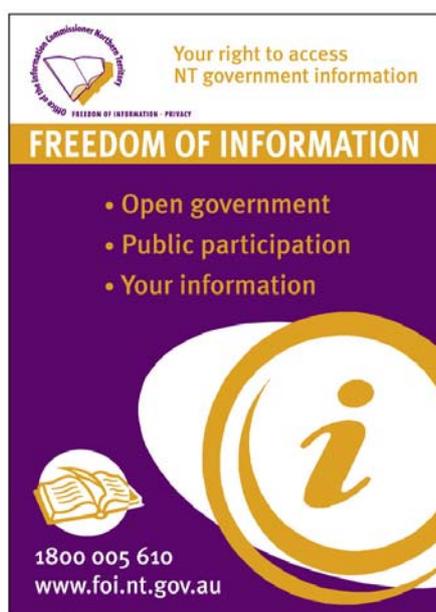
I should start by commending agency staff, particularly at the Information Officer level, for adopting a positive and flexible attitude to implementation of FOI and Privacy schemes. On the whole, I consider that the year has seen substantial progress towards establishing the FOI and Privacy schemes as valued parts of the core business of government organisations in the Territory.

Before the commencement of the *Information Act* on 1 July 2003, a significant amount of work was undertaken in preparation for the Act by an interdepartmental committee and the Information Act Implementation Team, co-ordinated by the Department of Justice. A website containing materials for agencies was created, a large number of training sessions were conducted in various centres throughout the Territory, and a network of Information Officers established.

The Information Commissioner took up Office in March 2003 and worked with the Committee and the Implementation Team to promote awareness and understanding of FOI and Privacy in the public sector. The efforts of the Implementation Team members (Zoe Marcham, Tanya Jacobs, Jacinta Stanford and Caroline Heske) and the interdepartmental committee members created a positive environment for implementation. They are to be congratulated on their efforts.

However, in 2003-04, the bulk of the work involved in administering the Act fell to the individual public sector organisations that have obligations under the Act. In that regard, Information Officers and other staff within organisations have put a great deal of effort into activities such as:

- Developing procedures for dealing with FOI access and correction applications
- Conducting Information Audits to establish what personal information is held by the organisation
- Developing privacy policies to explain how personal information is collected and handled
- Reviewing existing policies, procedures and documentation to ensure that they comply with the Information Privacy Principles
- Dealing with inquiries from agency staff and members of the public about privacy and FOI issues
- Developing and conducting internal training sessions on FOI and Privacy for agency staff.



Posters produced in 2004 and available from our Office

Early in the reporting year, the Implementation Team arranged for an external consultant to offer advanced training on FOI and Privacy to Information Officers and decision-makers, to supplement the general training offered by the Implementation Team and our Office. This training was followed up by other advanced sessions later in the year.

Certain advantages of having a common system for recording and managing FOI applications were recognised early in the implementation phase. A software program was developed to allow essential information about applications to be recorded. It is now utilised by most agencies.

The balance of this chapter discusses statistics obtained in relation to the FOI scheme. Similar statistics are not recorded in relation to privacy complaints. Each public sector organisation has been bound by the Information Privacy Principles since 1 July 2003. Individuals have been entitled to make complaints to organisations (but not to the Information Commissioner) about breaches of privacy from that time. There is, however, no detailed legislative framework for dealing with privacy complaints as there is for FOI applications, and statistics on the number of complaints that raise privacy issues are not required to be reported to the Information Commissioner.

FOI Access scheme

Applications lodged

During 2003/04, 284 applications were made to access government information under Part 3 of the *Information Act*.

Of those applications, 48% were received by the NT Police, Fire & Emergency Services. This has clearly required a significant commitment of resources on the part of the NTPFES to meet demand.

Table 1 - Top 6 organisations (by application received)

Organisation	No. of applications
NT Police, Fire & Emergency Services	137
Dept of Employment, Education & Training	30
Dept of Justice	30
Dept of Infrastructure, Planning and Environment	17
Dept of Community Development, Sport & Cultural Affairs	16
Dept of Health & Community Services	16

Details of the applications lodged with each organisation, and how they were dealt with, are recorded in Appendix 4, Tables 3 and 4.

For some organisations, the number of applications lodged are lower than may have been anticipated. To some extent, this may reflect a low level of demand, which will no doubt increase over time as community members become more familiar with these new rights. (In fact, early figures for the 2004-05 financial year suggest that demand has already increased significantly).

However, relatively low numbers for some organisations also reflect the existence or creation of alternative schemes that provide for access by other means. Many organisations already had information access schemes in place prior to the *Information Act*. The Act has also provided a catalyst for the review of existing, and the creation of new, access schemes.

Even in the case of FOI access applications that were made, some were subsequently withdrawn after the information sought was provided under administrative schemes. (This accounts for the withdrawal of a number of applications to the Department of Infrastructure, Planning and Environment, and the Department of Justice.)

The *Information Act* should never be regarded as the only way to obtain access to information or as limiting (except in order to protect the privacy of personal information) the ways that an organisation can disclose information.

The Act establishes a general principle of accountability. It requires public sector organisations to make available to the public such government information as is reasonably possible (s.10). The FOI access scheme in Part 3 of the Act should be regarded as a backstop to deal with cases where access issues cannot be resolved by other means.

Personal information

An applicant under the FOI access scheme is not restricted to seeking information about themselves. However, many applicants do use the FOI provisions to find out about decisions or events that directly relate to them.

Of applications for access made during the year, 64% were limited to seeking personal information about the applicant. For most organisations that received over 3 access applications, 'personal information' applications represented between about 55% and 75% of applications lodged.

However, the nature of some organisations is such that they hold relatively little personal information. So for example, the Department of the Chief Minister and NT Treasury received no applications that related solely to personal information. The only other organisation that fell significantly outside the most common range was the Department of Infrastructure, Planning and Environment, with 29% of applications being for personal information only.

What were applicants looking for?

Applicants can seek access to any government information, whether or not it relates to them in some way. Set out below are some examples of the types of information that applicants have sought during the year:

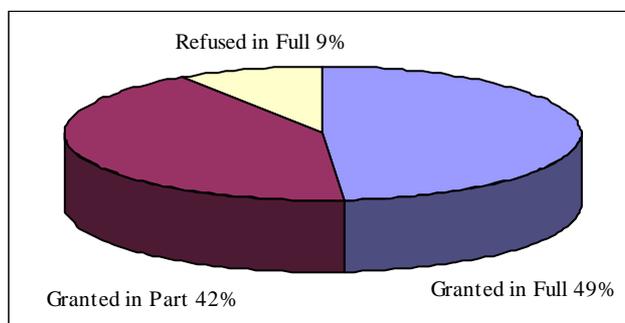
- individual seeking access to his parole board files
- individual seeking a copy of a transcript of court proceedings;
- individual seeking copies of briefings and memos in relation to a matter before a tribunal
- community group seeking information about a development application
- community group seeking information about a clearing application
- lawyer seeking information about contrast sensitivity or glare sensitivity
- lawyer seeking information about rezoning application

- individual seeking information about complaints made by the individual to their housing authority
- applicant seeking information taken to Budget Estimates Committee
- individuals seeking information about contract management practices
- journalist seeking information about the Government's involvement in the management of a major event
- individual seeking information about the Federal Government's power to overrule NT legislation
- individual seeking information about aboriginal development for research for higher degree
- media organisation seeking information regarding a compensation payment
- job applicant seeking details of appointment process
- pastoral lease holder seeking details of mineral leases on property.

How much information did people get?

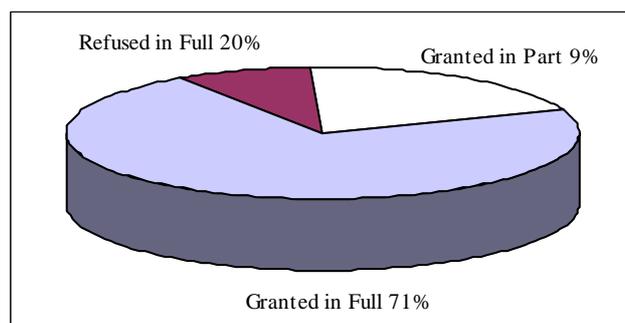
The *Information Act* recognises that there may be reasons for refusing access to some information in the public interest or on operational grounds.

Just under 50% of finalised applications resulted in the applicant getting access to all information identified by the organisation as falling within the terms of the application. In a further 42% of cases, access was granted to some but not all of the information sought.



Applications 2003-2004

Full access was granted to 14 599 pages, with edited access given to 1 766 pages. This means that full or edited access was given to 80% of pages sought.



Pages 2003-2004

By far the most common ground for refusal of access was reliance on one or more of the exemption provisions. Exemption provisions are designed to protect personal and business interests of members of the community and to ensure the effective and efficient operation of government.

In many cases, only a small amount of information may be deleted from a page, for example, a complainant's name, address or home phone number. In those cases, the rest of the page is disclosed. In other cases, a larger proportion, or even a whole page may qualify for exemption. Information was refused to information on the basis of an exemption in 97 applications.

Other reasons for refusing access included decisions that:

- the information did not exist (9 applications)
- the information was already publicly available (6 applications)
- the organisation would neither confirm nor deny the existence of information sought (3 applications).

Details of the reasons for refusal relied on by each organisation are recorded in Appendix 4, Table 5.

Exemptions relied on

Organisations were requested to provide details of the number of pages in respect of which each exemption was relied on. The details were provided on the following basis:

- a page was counted even if only a small part of it was deleted
- if more than one exemption was relied on, each was counted
- as the request was not made until later in the year, page numbers for a small number of applications were based on estimates.

Table 2 - Top 6 exemptions relied on (by page)

Exemption	No. of pages
Unreasonable interference with privacy	1446
Legal professional privilege	978
Existing secrecy provision	779
Prejudice to attainment of objects of a test, assessment or audit	664
Disclose information about a proceeding before a court or tribunal	597
Deliberative processes	514

(Note: The number of pages listed represents the number of pages from which information has been deleted. So, many of the pages listed above may have only had small portions deleted.)

It is not surprising that the privacy exemption heads the list. Frequently, all that will be deleted in these cases will be a name, a home address or home phone number. Protection of individual privacy is recognised as important for the proper functioning of the FOI access scheme. However, there is no blanket exemption for such information. In each case, there must be a consideration of public interest factors that weigh for and against disclosure.

The other figures in the table are not necessarily indicative of long term trends of the extent that organisations will rely on particular exemptions. Decisions by one organisation were responsible for refusal of access to over 90% of pages from which information was deleted because of the 'secrecy provision' exemption. The same is true in relation to the exemption for prejudice to attainment of the objects of a test, assessment or audit, although a different organisation was involved. Likewise, decisions made by individual organisations (although, again, not the same organisation in each case) were responsible for 83% of refusals on the basis of legal professional privilege, 75% of refusals on the basis of disclosing information about a legal proceeding and 57% of refusals on the basis of the deliberative process exemption.

That being said, it is likely that the legal professional privilege exemption will continue to be relied on in relation to a large number of pages. This exemption recognises a common law limit on the requirement to disclose information in court proceedings. The nature of litigation (although the exemption is not limited to communications for the purpose of litigation) lends itself to the creation of large numbers of documents which are likely to qualify for exemption.

Details of the exemptions relied on by each organisation are recorded in Appendix 4, Table 6.

Exemption certificates

The Chief Minister has the power to issue an exemption certificate, certifying that particular government information is exempt under one of the Executive Council, Cabinet, security and law enforcement, privacy, or cultural information exemptions. An exemption certificate is conclusive evidence that it is not in the public interest to disclose the information.

The Chief Minister has advised that no exemption certificates were issued in 2003-04.

Application and processing fees

Organisations can charge for accepting and dealing with access applications, in line with a fee structure set out in the Act and Regulations. Fees for applications restricted to personal information are considerably more limited

than for applications about general information. Overall, organisations charged a total of \$22 685 for application or processing fees.

Fees can be waived or reduced in certain circumstances. The total figure reported for waiver or reduction of fees was \$2 122. However, this figure does not represent the total amount of fees waived or reduced because, in cases where a decision is made to waive a processing fee before an estimate of costs is made, organisations would not usually calculate the precise fee that could have been charged.

Details of the fees charged and fees waived or reduced by each organisation are recorded in Appendix 4, Table 7.

FOI Correction scheme

Individuals have the right to apply to an organisation to correct personal information about them that is inaccurate, incomplete or out of date. An organisation can make the correction sought, make a different correction or refuse to correct. If the organisation refuses to make the correction sought, the applicant can require the organisation to take reasonable steps to attach to the information a statement of the applicant's opinion.

During 2003-04, four applications were made to correct personal information. In one case, a correction was made in a form other than that requested. In the other 3 cases, no correction was made but statements of the applicant's opinion were associated with the information.

Details of the applications received by each organisation are recorded in Appendix 4, Table 8.

Appendix 1

Freedom of Information – What’s it all about?

Freedom of Information is about giving everyone in the community the right to seek access to the government information that they want.

The *Information Act* NT has introduced a right to seek access to information held by the Northern Territory Government organisations (and, from 1 July 2005, local authorities). There are now Freedom of Information laws in relation to government information in every State and Territory and at the national level in Australia, as well as in over 50 other countries around the world.

Rationale for Freedom of Information (FOI)

FOI is a fundamental enhancement of the democratic process that developed throughout the second half of the twentieth century. It has involved a shift away from notions of ‘government-owned’ information, to a recognition that information held by government is held on trust for the community.

There are three broadly recognised bases for FOI laws:

- **Government accountability.** Enhancing the ability of community members to assess the performance of government.
- **Public participation.** Giving people the chance to be better informed about issues being considered by government, so that they are better positioned to take part in public debate.
- **Individual right to know.** Giving people the chance to know what information government holds about them, and the chance to correct it if the information is wrong.

The Australian Law Reform Commission and Administrative Review Council have explained the need for FOI in these terms:

Australia is a representative democracy. The Constitution gives the people ultimate control over the government, exercised through the election of the members of Parliament. The effective operation of representative democracy depends on the people being able to scrutinise, discuss and contribute to government decision making.

To do this, they need information. ... the FOI Act has an important role to play in enhancing the proper working of our representative democracy by giving individuals the right to demand that specific documents be disclosed. Such access to information permits the government to be assessed and enables people to participate more effectively in the policy and decision making processes of the government.

(Open Government: a review of the federal Freedom of Information Act 1982, ALRC & ARC, 1996, paragraph 2.3)

The Fitzgerald Report, produced in Queensland in 1989, put it succinctly:

Information is the lynch-pin of the political process. Knowledge is, quite literally, power. If the public is not informed, it cannot take part in the political process with any real effect.

(Report of the Commission of Inquiry into Possible Illegal Activities and Associated Misconduct, G E Fitzgerald Chairman, 1989, page 126)

Pro-disclosure principle

The driving principle behind development of FOI is that government should be more open. It should constantly be developing ways to better inform people about its operations. This principle is made clear in s.10 of the *Information Act*, which is headed “*General principle of accountability for government information*”. It provides that NT public sector organisations are to “*make available to the public such government information as is reasonably possible*”.

Government already makes a large amount of information available to the public on a daily basis. The access provisions in Part 3 of the Act do not restrict the provision of access by other means or limit the information that can be provided. The access provisions provide a backstop that allows an individual to seek access to government information that is not otherwise made available.

Fundamental approach to FOI scheme

The FOI access scheme covers information held in records of NT public sector organisations. That includes electronic records.

There are two fundamental components to the FOI access scheme:

- Any person can apply for access to any government information regardless of whether they have a particular interest in the information.
- The applicant can get access to all the information they seek, except to the extent that disclosure of particular information would be contrary to the public interest.

The second component recognises that there will be good reasons in the public interest for refusing access to some information but also recognises that access should be refused only to that information.

The *Information Act* sets out good reasons for refusing access in a series of **exemptions** contained in Part 4 of the Act.

Exemptions

There are two types of exemptions.

- Exemptions in sections 51-58 include a public interest test, so that even if the requirements for the exemption are satisfied, information will only be exempt if, in the particular case, it is not in the public interest to disclose the information. This allows comparison in each case of public interest considerations that favour disclosure against considerations that weigh against disclosure.
- For exemptions in sections 45-49, satisfaction of the requirements for exemption is itself regarded as enough to show that disclosure would not be in the public interest. There is no separate public interest test that allows factors favouring disclosure to be taken into account. So, for example, one exemption recognises the long-standing convention that Cabinet deliberations should not be disclosed. And another recognises the established law relating to legal professional privilege.

Some exemptions are designed to ensure that the privacy interests of individuals and private business interests are taken into account in deciding whether access should be refused. Other exemptions are aimed at ensuring that law enforcement functions and the efficient conduct of other government functions are not unduly prejudiced by disclosure.

An organisation is entitled to refuse access to information requested by an applicant to the extent that it is exempt. However, the organisation is still obliged to give access to information that is not exempt even if it appears in a document or on a page that contains exempt information.

Consultation

A public sector organisation may have to consult a third party before deciding to disclose information sought in an FOI access application, if its disclosure might interfere with another person's privacy, unreasonably expose a business to disadvantage, prejudice inter-governmental relations or disclose information about an Aboriginal sacred site or tradition.

The third party has a right to object to disclosure but does not have a right to veto disclosure. If the organisation decides to disclose the information, the third party has a right to complain to the independent Information Commissioner to seek a review of the decision.

Costs

Locating information and providing access can be costly, so fees are payable for most applications. The fees payable differ depending on whether the application is solely for personal information about the applicant or extends to non-personal information. The fees are set out in the Schedule to the *Information Regulations*. They are summarised below:

	Request limited to personal information of applicant	Request for non-personal information or a mix
Application fee	No fee	\$30
Searching, consulting, decision-making	No fee	\$25 per hour or part for non-personal information
Inspection	First 2 hours free, then \$25 per hour or part	\$25 per hour or part
A4 B&W photocopies	20c per page	20c per page
Other costs of arranging or providing access	Actual cost	Actual cost

Tips for applicants

An FOI access application should be made to the organisation that holds the information you want. This may be a Department like the Department of Justice or the Department of Health and Community Services, or another body like the NT Police, Fire and Emergency Services or the Ombudsman.

FOI is just one way of accessing government information. NT government organisations already publish a lot of information about what they do. There are also other administrative and legal ways of getting access to information. Before making an FOI access application, people seeking information might want to contact the organisation they think holds information to see what they have available and discuss any options for access.

Government organisations hold a lot of information, so it may not be very useful if the application simply asks for “*everything you have about my car accident*”. It will be much more helpful (and may reduce the cost of the application) if you describe the information you want in detail, for example: “*I want all police reports and photographs relating to a car accident I had on 16 May 2002 at about 8:00pm on the Stuart Highway 30 km north of Katherine. I drove a white Holden ute licence number 123 456, and the other car was a green Ford sedan driven by Tom Jones. Sergeant Smith came, took photos and interviewed both of us.*”

There are some limits on the scheme in relation to organisations like government owned corporations, government business divisions, courts and tribunals. The scheme will apply to local authorities from 1 July 2005. There are also limits in relation to non-personal information received or created before 1 July 1993.

Correction of personal information

The *Information Act* also provides a right for individuals to apply for correction of personal information about them that is held by a public sector organisation, if the information is inaccurate, incomplete or out of date. There is no fee payable in relation to a correction application.

The organisation may decide to make the correction requested, to make a different correction or to refuse correction. Even if the organisation decides not to make the correction sought, it can be required to take reasonable steps to associate with the information a statement by the applicant.

These rights do not apply to information that is historical only.

Review and complaints

An applicant who is not satisfied with the decision of an organisation in relation to a decision on access, fees or correction can apply for internal review (within the organisation). If the applicant is not satisfied with the internal review decision, they can complain to the independent Information Commissioner.

Each party to an Information Commissioner complaint must pay their own costs (although the Commissioner can order a party to pay the hearing costs of another party in exceptional circumstances).

More information

Information about Freedom of Information in the Territory (including how to make an application for access or correction) is available on the Information Commissioner's website: www.foi.nt.gov.au, and in guidelines available from the Office of the Information Commissioner.

There are similar FOI rights covering Commonwealth agencies. The first point of contact should be the relevant agency. There are also access and correction rights under the *Privacy Act* (Cth) in relation to personal information held by Commonwealth agencies and many private sector organisations (eg, organisations with an annual turnover in excess of \$3m, health service providers, credit providers). Information about those rights can be obtained from the organisation concerned or the Office of the Federal Privacy Commissioner (www.privacy.gov.au or 1300 363 992).

Appendix 2

Privacy Protection – What’s it all about?

... finding a balance between the privacy interests of the person whose information is collected or handled and the legitimate interests of good government

The Privacy scheme in the *Information Act* (NT) is about making sure that NT public sector organisations respect the privacy of individuals when they collect or handle personal information. The right to privacy is recognised as a fundamental human right in the *Universal Declaration of Human Rights* (1948) and the *International Convention for the Protection of Civil and Political Rights* (1966), to which Australia is a signatory.

Information Privacy Principles (IPPs)

The rules for protecting privacy are set out in ten Information Privacy Principles that appear in the Schedule at the end of the *Information Act*. The requirements of the IPPs can be discussed under four headings:

- Collection of information
- Use and Disclosure
- Management of information
- Openness

The IPPs are summarised over the page.

How the IPPs work

The *Information Act* recognises that it is often necessary to find a balance between the privacy interests of the person whose information is collected or handled and the legitimate interests of good government and other people.

The IPPs set out general rules for organisations to apply. But those rules are subject to qualifications and exceptions that recognise those other interests.

Examples of those qualifications and exceptions are:

- IPP 1.4 requires that information about a person only be collected from that person, so long as that is *reasonable and practicable*. This recognises that there can be cases where obtaining information directly from the individual would be unreasonable or impractical, eg., where it might prejudice a covert police operation.
- IPP 2.1 prohibits use and disclosure of information for a purpose other than the purpose it was collected for, but then sets out a number of exceptions. This recognises that it can be in the public interest to use or disclose information that was originally collected for one purpose for other purposes, for example, for law enforcement purposes.
- IPP 6.1 provides a general right of access by an individual to his or her personal information. But it also lists cases in which access to particular information can be refused, eg, if providing access would unreasonably interfere with the privacy of another person.
- Sections 69-71 of the Act provide for exclusion or variation from the IPPs in relation to some functions, including court proceedings, law enforcement activities and research.

Complaints and inquiries about privacy

If a person wants to complain about a breach of privacy, obtain information, or is concerned about why or how their information has been collected or handled, they should contact the organisation concerned. (Bodies like the Department of Employment, Education and Training, the Department of Justice, the NT Police and the Ombudsman, are public sector organisations.)

For events that happen after 1 July 2004, a person can complain to the independent Information Commissioner about a breach of the IPPs or other interference with their privacy, so long as they have requested the organisation to take action and have not received a satisfactory response.

Costs

There is no fee for making a complaint about a breach of privacy either to the organisation or to the Information Commissioner. If a fee is charged for the cost of providing access to personal information under IPP 6, it must not be excessive.

Each party to an Information Commissioner complaint must pay their own costs (although the Commissioner can order a party to pay the hearing costs of another party in exceptional circumstances).

Information Privacy Principles - Overview

Collection (IPPs 1, 7, 8, 10)

Personal information—

- can only be collected if it is necessary for the activities of the organisation;
- must be collected in a lawful, fair and not unreasonably intrusive way;
- must be collected from the person, if that is reasonable and practicable.

There are special limits on collection of sensitive information, identifying information and unique identifying codes (eg., driver's licence numbers).

Use and Disclosure (IPPs 2, 7, 9)

Personal information can be used or disclosed for the purpose for which it was collected. The IPPs limit the other purposes (secondary purposes) for which personal information can be used or disclosed within the organisation or outside the organisation. Use or disclosure for secondary purposes is allowed—

- if the person consents;
- if it is required or authorised by law;
- for some purposes related to the primary purpose;
- for some law enforcement and health and safety purposes.

There are also limits on transferring information outside the Territory and on use and disclosure of unique identifying codes (eg., driver's licence numbers).

Management (IPPs 3, 4)

Each organisation must take reasonable steps to —

- ensure that personal information is accurate, complete and up to date;
- protect personal information from misuse and loss and from unauthorised access, modification or disclosure;
- destroy or permanently de-identify personal information if it is no longer needed for any purpose.

Openness (IPPs 1, 5 and 6)

Each organisation must—

- make available on request its privacy policies and details about personal information held by it;
- take reasonable steps to ensure that each individual is aware of certain information at or before the time personal information about them is collected (eg., the purpose for collection);
- allow people to seek access to personal information held about them;
- allow people to seek correction of inaccurate, incomplete or out-of-date information.

More information

Information about Privacy is available on the Information Commissioner's website: www.privacy.nt.gov.au, and in guidelines available from the Office of the Information Commissioner.

There are privacy rights in relation to Commonwealth agencies and many private sector organisations (eg, organisations with annual turnover in excess of \$3m, health service providers, credit providers). Information about those rights can be obtained from the organisation concerned or the Office of the Federal Privacy Commissioner (www.privacy.gov.au or 1300 363 992).

Appendix 3

Financial Statements for the OIC

The Office of the Information Commissioner promotes fairness and justice in the way that government organisations grant access to information and protect the privacy of personal information they hold. The Information Commissioner is appointed under the *Information Act 2002*. Key functional responsibilities of the Office include:

- promoting understanding and awareness of freedom of information in the public sector and the community;
- promoting understanding and awareness of privacy protection in the public sector and the community;
- responding to general inquiries about freedom of information and privacy protection;
- providing assistance to the public sector in relation to development and review of policies and legislation that concern, or raise issues involving, freedom of information and privacy protection;
- dealing with formal complaints about freedom of information decisions made by public sector organisations;
- dealing with formal complaints about interferences with individual privacy by public sector organisations;
- considering other applications and requests for comment from public sector organisations in relation to freedom of information, privacy protection and records management, as required under the *Information Act*.

It should be noted that while funding was received in 2002-03 to establish the Office of the Information Commissioner, the *Information Act* did not commence until 1 July 2003.

**OFFICE OF THE INFORMATION COMMISSIONER
FINANCIAL STATEMENTS
For the year ended 30 June 2004**

CERTIFICATION OF FINANCIAL STATEMENTS

We certify that the attached financial statements for the Office of the Information Commissioner have been prepared from proper accounts and records in accordance with the prescribed format, the *Financial Management Act* and Treasurer's Directions.

We further state that the information set out in the Statement of financial performance, Statement of financial position, Statement of cash flows and notes to and forming part of the financial statements, presents fairly the financial performance for the year ended 30 June 2004 and the financial position on that date.

At the time of signing, we are not aware of any circumstances that would render the particulars included in the financial statements misleading or inaccurate.



**SOMSONG ALBERT
OFFICE MANAGER
24 September 2004**



**PETER SHOYER
INFORMATION COMMISSIONER
24 September 2004**

**OFFICE OF THE INFORMATION COMMISSIONER
STATEMENT OF FINANCIAL PERFORMANCE
For the year ended 30 June 2004**

	NOTE	PAGE	2004 \$'000
OPERATING REVENUE			
<i>Sales of goods and services</i>			
Output revenue			434
Services received free of charge	8	Page 42	21
TOTAL OPERATING REVENUE			<u>455</u>
OPERATING EXPENSES			
Employee expenses			324
<i>Administrative expenses</i>	2	Page 41	
Purchases of goods and services			94
Repairs and Maintenance			1
Other administrative expenses	3	Page 41	21
TOTAL OPERATING EXPENSES			<u>440</u>
NET OPERATING SURPLUS	7	Page 42	<u>15</u>

The Statement of Financial Performance is to be read in conjunction with the Notes to the Financial Statements

**OFFICE OF THE INFORMATION COMMISSIONER
STATEMENT OF FINANCIAL POSITION
As at 30 June 2004**

	NOTE	PAGE	2004 \$'000
ASSETS			
<i>Current assets</i>			
Cash and deposits	4	Page 41	47
Total current assets			<u>47</u>
TOTAL ASSETS			<u><u>47</u></u>
 LIABILITIES			
<i>Current liabilities</i>			
Provisions	5	Page 41	32
Total current liabilities			<u>32</u>
TOTAL LIABILITIES			<u><u>32</u></u>
 NET ASSETS			 <u><u>15</u></u>
 EQUITY			
Accumulated funds	6	Page 42	15
TOTAL EQUITY			<u><u>15</u></u>

The Statement of Financial Position is to be read in conjunction with the Notes to the Financial Statements

**OFFICE OF THE INFORMATION COMMISSIONER
STATEMENT OF CASH FLOWS
For the year ended 30 June 2004**

	NOTE	PAGE	2004 \$'000
CASH FLOWS FROM OPERATING ACTIVITIES			
<i>Operating receipts</i>			
<i>Receipts from sales of goods and services</i>			
Output revenue received			434
Total operating receipts			434
<i>Operating payments</i>			
Payments to employees			(293)
Payments for goods and services			(94)
Total operating payments			(387)
 Net cash from operating activities	 7	 Page 42	 47
Net increase in cash held			47
Cash at beginning of financial year			0
CASH AT END OF FINANCIAL YEAR	4	Page 41	47

The Statement of Cash Flows is to be read in conjunction with the Notes to the Financial Statements.

**OFFICE OF THE INFORMATION COMMISSIONER
NOTES TO FINANCIAL STATEMENTS
For the year ended 30 June 2004**

1 STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

(a) Objectives and funding

The Office of the Information Commissioner's mission is to promote fairness and justice in the way that government organisations grant access to information and protect the privacy of personal information they hold.

The Office is predominantly funded by Parliamentary appropriations. The financial statements encompass all funds through which the Office controls resources to carry on its functions.

In the process of reporting on the Office as a single Office, all intra Office transactions and balances have been eliminated.

(b) Basis of accounting

The financial statements have been prepared in accordance with the requirements of the *Financial Management Act* and Treasurer's Directions.

Except where stated the financial statements have been prepared in accordance with the historical cost convention.

These financial statements do not comply with International Accounting Standards, as Australia is not adopting these requirements until reporting periods commencing on or after 1 January 2005. However the potential impact on accounting policies that will arise from the transition to AASB equivalents of IASB pronouncements is disclosed in Note 10 Page 42.

The following is a summary of the material accounting policies, which have been adopted in the preparation of the financial statements.

(c) Changes in accounting policies

The accounting policies adopted are consistent with those of the previous year except in respect of services received free of charge.

Currently all agencies receive services free of charge, predominantly from the Department of Corporate and Information Services (DCIS) for various finance and human resource functions. From 1 July 2003 these amounts have been disclosed within the Statement of Financial Performance as revenue under 'Services Received Free of Charge' and under "Purchases of Goods and Services" in Administrative Expenses. Previously these amounts had been disclosed by way of note but not reflected within the Statement of Financial Performance. The financial effect has been to increase both Total Operating Revenue and Operating Expenses by \$0.021M, with no impact on the net operating surplus/deficit.

OFFICE OF THE INFORMATION COMMISSIONER
NOTES TO FINANCIAL STATEMENTS
For the year ended 30 June 2004

(d) Revenue recognition

Revenue is recognised at the fair value of the consideration received net of the amount of goods and services tax (GST). Exchanges of goods or services of the same nature and value without any cash consideration are not recognised as revenues.

Output revenue

Output revenue represents Government funding for the Office's operations and is the amount of Output Revenue allocation in Budget Paper Number 3, 2003-04, Page 95.

Revenue in respect of this funding is recognised in the period in which the Office gains control of the funds.

(e) Goods and services tax

Revenues and expenses are recognised net of the amount of goods and services tax (GST), except where the amount of GST incurred on a purchase of goods and services is not recoverable from the Australian Tax Office (ATO). In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense.

Receivables and payables are stated with the amount of GST included.

The net amount of GST recoverable from, or payable to, the ATO is included as part of receivables or payables in the Statement of Financial Position.

Cash flows are included in the Statement of Cash Flows on a gross basis. The GST components of cash flows arising from investing and financing activities which is recoverable from, or payable to, the ATO are classified as operating cash flows.

(f) Cash and cash equivalents

For the purpose of the Statement of Financial Position and the Statement of Cash Flows, cash includes cash on hand, cash at bank and cash equivalent assets controlled by the Office. Cash equivalents are highly liquid short-term investments that are readily convertible to cash. Bank overdrafts are carried at the principal amount.

(g) Payables

Liabilities for trade creditors and other amounts payable are carried at cost which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the Office. Trade creditors are normally settled within 30 days.

OFFICE OF THE INFORMATION COMMISSIONER
NOTES TO FINANCIAL STATEMENTS
For the year ended 30 June 2004

(h) Employee benefits

Provision is made for employee benefits accumulated as a result of employees rendering services up to the reporting date. These benefits include wages and salaries and annual leave. Liabilities arising in respect of wages and salaries and annual leave expected to be settled within twelve months of the reporting date are measured at their nominal amounts based on remuneration rates which are expected to be paid when the liability is settled.

No provision is made for sick leave, which is non-vesting, as the anticipated pattern of future sick leave to be taken indicates that accumulated sick leave is unlikely to be paid.

Employee benefits expenses are recognised in respect of the following categories:

- wages and salaries, non-monetary benefits, annual leave, sick leave and other leave entitlements; and
- other types of employee benefits.

are recognised against profits on a net basis in their respective categories.

As part of the introduction of *Working for Outcomes*, the Central Holding Authority assumed the long service leave liabilities of Government Agencies, including the Office of the Information Commissioner. The actual liability was transferred from Office ledgers during 2002-03.

(i) Superannuation

Employees' Superannuation entitlements are provided through the NT Government and Public Authorities Superannuation Scheme (NTGPASS), Commonwealth Superannuation Scheme (CSS) and non-government employee nominated schemes for those employees commencing on or after 10 August 1999.

The Office makes superannuation contributions on behalf of its employees to the Central Holding Authority or the non-government employee nominated schemes. Any liability for government superannuation is met directly by the Central Holding Authority and the Office has and will continue to have no direct superannuation liability.

(j) Rounding of amounts

Amounts in the financial statements and notes to the financial statements have been rounded to the nearest thousand dollars.

OFFICE OF THE INFORMATION COMMISSIONER
NOTES TO FINANCIAL STATEMENTS
For the year ended 30 June 2004

		<u>2004</u> <u>\$'000</u>
2	OPERATING EXPENSES	
	The net operating surplus has been arrived at after charging expenses such as:	
	Administrative Expenses	
	Consultants (Note 1)	0
	Advertising (Note 2)	1
	Marketing and Promotion (Note 3)	23
	Document Production	3
	Legal Fees	0
	Recruitment (Note 4)	2
	Training and Study	6
	Official Duty Fares	6
	Travelling Allowance	2
		2
	Notes:	
	1) Includes marketing and promotion and IT consultants	
	2) Does not include recruitment advertising or marketing and promotion advertising	
	3) Includes advertising for marketing and promotion but excludes marketing and promotion consultants' expenses, which are incorporated in the consultants' category	
	4) Includes recruitment related advertising costs	
3	OTHER ADMINISTRATIVE EXPENSES	
	Services Received Free of Charge (refer Note 8 Page 42)	21
		21
4	CASH AND DEPOSITS	
	Cash at bank	47
		47
5	PROVISIONS	
	Current	
	<i>Employee benefits</i>	
	Annual leave	29
	Leave loading	2
	Other current provisions	
	Other provisions	1
		32

OFFICE OF THE INFORMATION COMMISSIONER
NOTES TO FINANCIAL STATEMENTS
For the year ended 30 June 2004

		2004 \$'000
6	EQUITY	
	Accumulated funds	
	Balance at the beginning of year	0
	Current year operating surplus	15
	Balance at the end of year	15
7	NOTES TO THE STATEMENT OF CASHFLOWS	
	<i>Reconciliation of net operating surplus to net cash used in operating activities.</i>	
	Net operating surplus	15
	<i>Non-cash items</i>	
	<i>Changes in Assets and Liabilities</i>	
	Increase in provision for employee benefits	31
	Increase in other provisions	1
	Net cash flows from operating activities	47
8	SERVICES RECEIVED FREE OF CHARGE	
	Corporate and information services	21

9 EVENTS SUBSEQUENT TO BALANCE DATE

There are no events subsequent to balance date to report.

10 THE IMPACT OF ADOPTING AASB EQUIVALENTS TO IASB PRONOUNCEMENTS

At this point in time the Office of the Information Commissioner is managing the transition to adoption of the AASB equivalents to International accounting standards through attendance at seminars and working with the Northern Territory Treasury who, through its accounting policy branch, will identify and communicate changes required to Treasurer's Directions and future reporting requirements.

At this stage the likely key differences in accounting policy are anticipated to be:

Impairment Testing

Under the Australian equivalent of IAS 36 *Impairment of Assets* the recoverable amount of an asset is determined as the higher of net selling price and value in use. This will result in a change in the Office of the Information Commissioner's current accounting policy as currently under AAS10 the recoverable amounts test does not apply to not-for-profit entities.

Revenue

Rules governing grants provided to entities to be altered from a reciprocal/non-reciprocal approach to encompass in substance agreements whereby income in certain circumstances can be matched over the period the service is provided rather than treated as revenue in the year of receipt.

The future financial effects of the above changes in accounting policy cannot be reliably estimated at this stage.

Appendix 4

Public Sector Organisations

FOI Statistics Reported – 2003-2004

The following tables set out information about FOI access and correction applications lodged with, and dealt with by, each public sector organisation during the reporting year:

- **Table 3 - Overview of FOI Access applications**
- **Table 4 - Access Overview – (Access granted in full, in part, refused)**
- **Table 5 - Reasons for refusal**
- **Table 6 - Exemptions relied on (by page)**
- **Table 7 - Fees charged / Fees waived or reduced**
- **Table 8 - FOI Correction applications**

The full name of each public sector organisation appears in Table 3. Names may be abbreviated in other tables. Abbreviations are listed below.

DBIRD	Dept of Business, Industry and Resource Development
DCDSCA	Dept of Community Development, Sport and Cultural Affairs
DCM	Dept of the Chief Minister
DCIS	Dept of Corporate and Information Services
DEET	Dept of Employment, Education and Training
DHCS	Dept of Health and Community Services
DIPE	Dept of Infrastructure, Planning and Environment
DOJ	Dept of Justice
NTT	NT Treasury
NTPFES	NT Police, Fire and Emergency Services
OCPE	Office of the Commissioner for Public Employment

As the requirements for reporting were not finalised until later in the reporting year, page number statistics for a small number of applications are based on estimates.

The *Information Act* did not provide for internal review of FOI decisions during the reporting year. Statistics relating to internal review decisions will be displayed in future annual reports.

The *Information Act* made only limited provision for complaints to the Information Commissioner during the reporting year. Only one complaint was received during the reporting year, in respect of an FOI decision by the NT Police Fire and Emergency Services. It had not been finalised at the end of the reporting year. Statistics relating to complaints to the Information Commissioner will be displayed in future annual reports.

Table 3 - Overview of FOI Access applications (Figures are for number of applications)

Organisation	Lodged	Finalised	Not accepted ¹	Transfer	Withdrawn ²	Pending at end year
Business, Industry and Resource Development (Dept)	7	3	2		1	1
Community Development, Sport and Cultural Affairs (Dept)	16	15			1	
Chief Minister (Dept)	5	5				
Corporate and Information Services (Dept)	3	2	1			
Employment, Education and Training (Dept)	30	26			1	3
Health and Community Services (Dept)	16	14		1 ³		2
Infrastructure, Planning and Environment (Dept)	17	9		1	6	1
Justice (Dept)	30	13		6	9	2
NT Treasury	5	3			1	1
Minister for Lands and Planning	1	1				
Police, Fire and Emergency Services	137	116	5	1	7	8
Commissioner for Public Employment	10	6	4			
Ombudsman	2	2				
Darwin Port Corporation	1	1				
NT Tourist Commission	1	1				
Charles Darwin University	1	1				
Territory Insurance Office	1		1			
PowerWater	1		1			
TOTAL	284	218	14	9	26	18

¹ Reasons for non-acceptance include non-payment of the \$30 application fee, failure to be satisfied as to the identity of the applicant, information outside the scope of the Act, eg., non-personal information held by a GBD or GOC, or non-personal information created before 1 July 1993.

² A number of applications were withdrawn after access to information was provided under administrative schemes.

³ Transferred in part. Balance of application processed by DHCS.

Table 4 - Access Overview – (Access granted in full, in part or refused)

Organisation ⁴	Applications granted in full	Applications granted in part	Applications refused in full	Pages granted in full	Pages granted in part	Pages refused in full
DBIRD		3		688	39	38
DCDSCA	1	14		1 561	66	122
DCM	1	2	2	2 829	97	48
DCIS		2		183	11	5
DEET	6	15	5	2 286	291	1 072
DHCS	8	2	4	365	477	1 007
DIPE	2	7		1 762	306	680
DOJ	11	2		1 415	32	7
NT Treasury	1	1	1	490	10	3
Min for Lands & Plan		1		54	79	
NTPFES	70	39	7	2 170	272	485
OCPE	4	1	1	173	2	663
Ombudsman		2		239	64	52
Darwin Port Corporation	1			34		
NT Tourist Comm		1		33	20	2
Charles Darwin Univ	1			317		
TOTAL	106	92	20	14 599	1 766	4 184

⁴ See page 43 or Table 3 for full titles of organisations.

Table 5 - Reasons for refusal

(Figures are for number of applications. In any one application, access to information may be refused for one or more reasons).

Organisation	Exempt	Already publicly available	Does not exist	Can't be found	Can't be identified	Deferred (s.23)	Unreasonable interference with operations	Neither confirm nor deny ⁵	Not covered by Act ⁶
DBIRD	3								
DCDSCA	14								
DCM	2		2						
DCIS	2								1
DEET	15		5						
DHCS	5		1					3	
DIPE	5	5				1			
DOJ	2								
NT Treasury	1								
Min for Lands & Plan	1								
NTPFES	43	1	1	1	3		1		
OCPE	1								
Ombudsman	2								
NT Tourist Comm	1								1
TOTAL	97	6	9	1	3	1	1	3	2

⁵ If it is not in the public interest for an applicant to know whether information exists, the organisation is not required to confirm or deny the existence of information.

⁶ For example, information may not fall within the Act if it is non-personal information that is held by a GOC or GBD, or that was created or received before July 1993.

Table 6 - Exemptions relied on (by page)

This table lists the number of times that access was refused to pages in full or granted in part on the basis of particular exemptions. A page is counted even if only a small amount of information was deleted from it. Each exemption is counted even if the same information was found to be exempt under several provisions (see Table 4 for total number of pages to which access was granted in part or refused in full). This table is intended to give an overall indication of how frequently particular exemptions have been relied on.⁷

Exemption and section number	DBIRD	DCDSCA	DCM	DEET	DHCS	DIPE	DOJ	NTT	NTPFES	TOTAL
Executive Council, Cabinet, Territory economy - s.45(1)⁸										
(a)(i)		3	16			5		1	51	76
(a)(ii)			8	3		4		4	6	25
(a)(iii)			2			7		5	4	18
(a)(iv)			3							3
(a)(v)		1	60		7	4	6		4	82
(a)(vi)			2						1	3
(a)(vii)		1		15		2				18
(b)			18							18
Security and law enforcement – s.46										
(1)(a)		8							47	53
(2)(a)				173		1			103	277
(2)(b)				1						1
(2)(c)					133				59	192
(2)(d)										4
(2)(e)			2							2

⁷ Organisations that only relied on 1 or 2 exemption provisions are listed at the bottom of this Table.

⁸ Draft information that is exempt under s.45(1)(a)(viii) is counted under the relevant provision of s.45(1)(a).

Table 6 - Exemptions relied on (by page) continued

Exemption and section number	DBIRD	DCDSCA	DCM	DEET	DHCS	DIPE	DOJ	NTT	NTPFES	TOTAL
Corresponding FOI law – s.47			7							7
Secrecy provisions – s.48					726			1	52	779
Preservation of system of justice – s.49										
(a)		115		173					49	337
(b)							1		12	13
(c)		114	6		452	6	5		14	597
(d)	8	115	17	815		22	1			978
Inter-governmental relations – s.51	7		38		22		1	1	52	121
Deliberative processes – s.52	2	25	34	14	293	28			54	514
Effective operations of organisations – s.53										
(a)									53	53
(b)			1							664
(c)	1	1								2
(d)	1									1

Table 6 - Exemptions relied on (by page) continued

Exemption and section number	DBIRD	DCDSCA	DCM	DEET	DHCS	DIPE	DOJ	NTT	NTPFES	TOTAL
Health, safety, environment – s.54										
(a)									54	54
(b)									1	1
Confidentiality obligations – s.55										
(1)		22		1		7			231	261
(3)	30	2	2	106		4			148	304
Privacy and cultural Information – s.56(1)										
(a)	56	50	27	299	360	214	26	1	257	1446
Commercial and business Information – s.57										
(1)(a)									57	57
(1)(b)	15	10	38			6			2	83
(3)(b)		1				22				23
(3)(c)(ii)	1									1
Financial and property interests of Territory – s.58										
	1					3				4

The following organisations relied on only one or two exemptions. The amounts listed below are included in the "Total" figures in the Table.

- DCIS s.46(2)(d), 4 pages s.57(1)(b), 12 pages
- Commissioner for Public Employment s.53(b), 663 pages s.56(1)(a), 2 pages
- Ombudsman s.52, 63 pages s.56(1)(a), 75 pages
- NT Tourist Commission s.52, 1 page s.55(3), 12 pages
- Minister for Lands & Planning s.56(1)(a), 79 pages.

Table 7 - Fees charged / Fees waived or reduced

Organisation	Fees charged		Fees waived or reduced	
	Application \$	Processing \$	Total of application fees waived or reduced \$	Total of processing fees waived or reduced ⁹ \$
DBIRD	90	851		
DCDSCA	90	1 544		150
Dept of Chief Minister	150	3 285		
DCIS	60	155		223
DEET	120	2 427	60	600
DHCS	180	2 498	30	164
DIPE	210	4 980	60	508
Dept of Justice	60	1 076	180	
NT Treasury	120	1 325		
Min for Lands & Planning	30			
NTPFES	450	1 554	30	
OCPE	30			39
Ombudsman		27	60	18
NT Tourist Commission	30	1 250		
Charles Darwin Univ	30	63		
TOTAL	1 650	21 035	420	1 702

⁹ In some cases, the amount of processing fees waived was not calculated because the decision to waive was made prior to estimation of costs.

Table 8 - FOI Correction applications

This Table records details of applications for correction of personal information. Applications are made on the basis that the information sought to be corrected is inaccurate, incomplete or out of date. An organisation can decide to make the correction specified, make a correction in another form or refuse to make a correction. If an applicant remains unsatisfied, he or she can require the organisation to take all reasonable steps to associate with the information a statement of the applicant's opinion. (Figures are for number of applications.)

Organisation	Lodged	Finalised	Correction made as specified	Correction made in other form	No correction made	Statement by applicant associated
Community Development, Sport and Cultural Affairs (Dept)	1	1			1	1
Employment, Education and Training (Dept)	1	1			1	1
Justice (Dept)	1	1			1	1
NT Police, Fire and Emergency Services	1	1		1		
TOTAL	4	4		1	3	3



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