



# Information Commissioner

NORTHERN TERRITORY



## 2017-18 ANNUAL REPORT





28 September 2018

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*, please find attached the Annual Report on the operations of the Office of the Information Commissioner for the period 1 July 2017 to 30 June 2018.

Yours sincerely

A handwritten signature in blue ink, appearing to read "P Shoyer".

Peter Shoyer  
Information Commissioner

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## Message from the Commissioner

On 13 August 2018, the *Information Act* (the Act) functions and staff of the Office of the Information Commissioner transferred to the Ombudsman's Office and Peter Shoyer became the Information Commissioner in addition to his role as Ombudsman. The former Information Commissioner, Brenda Monaghan, was appointed Deputy Ombudsman/Deputy Information Commissioner. The background to this transfer is discussed in the *History* section on page 7. The transfer has progressed well.

While this report has been prepared for Mr Shoyer's signature, its preparation and the work of the Office during the reporting period has been the responsibility of Ms Monaghan. We have therefore co-signed this message.

It is interesting to note that the number of Freedom of Information (FOI) applications received by public bodies continues to grow each year. The number received in 2017-18 was twice that received five years earlier. The increase echoes the trend seen in other jurisdictions – a reflection of the growing public awareness of an individual's right to access government information through FOI schemes. A quick review of *NT News* articles published over the past 12 months provides scores of occasions where the information was received through FOI.

Despite anecdotal evidence that some public sector organisations are struggling with the increased workload, statistical data provided by them suggests that most are still managing to comply with the time limits imposed by the Act. For our part, although the number of external review complaints received by our Office is trending upwards, we are responding to the demand by encouraging the parties to resolve matters early if possible. Our focus on early resolution is paying dividends and only two matters required a final hearing during this reporting period.

Increasingly, this office is called upon to provide advice to organisations on the privacy challenges raised by information-sharing, Open Data, Big Data, new technologies and cloud computing. We encourage organisations to approach us early on in the development of any new initiative that involves the collection or sharing of personal information about Territorians. The task of identifying and managing privacy risks is so much easier when protections are built into the design concept.

Throughout 2017-18, the FOI and privacy functions of the *Information Act* were conducted by the staff of the joint Office of the Commissioner, Information and Public Interest Disclosures. Our thanks go to that joint team who handled matters with professionalism and diligence.

**Peter Shoyer**

**Brenda Monaghan**



# Office of the Information Commissioner

## Introduction

### History

The Office of the Information Commissioner first opened its doors in 2003 and began accepting complaints from individuals who were seeking government information or complaining about privacy breaches by public sector organisations. Mr Peter Shoyer was the inaugural Information Commissioner for the Northern Territory from 2003 to 2007.

Between 2009 and August 2018, the Office of the Information Commissioner was co-located with the Office of the Commissioner for Public Interest Disclosures. Ms Brenda Monaghan was appointed as the Commissioner for both offices. Following on from the recommendations in the Martin Report (which led to the establishment of the Independent Commissioner Against Corruption), the FOI and Privacy functions of the Information Commissioner have recently been transferred to the Ombudsman.

As part of the arrangement, Ombudsman Peter Shoyer has taken over as Information Commissioner and Ms Monaghan has been appointed Deputy Ombudsman/Deputy Information Commissioner. The Information Commissioner's staff have now relocated to the Ombudsman's Office and the transition has been smooth. There are benefits that should flow from the new arrangement as it will allow a larger team to respond to any concerns regarding FOI, privacy and administration in public sector organisations.

### The Legislation

The *Information Act* ('the Act') is the legislation governing freedom of information, privacy, and public sector records management in the Northern Territory. The 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 and transparency and the legitimate protection of some government information, including personal information about individuals.

The Commissioner's powers include:

- Dealing with the external review of unresolved Freedom of Information (FOI) and privacy complaints through investigation and mediation processes;
- Referring unresolved complaints made from 1 May 2016 onwards to the NT Civil and Administrative Tribunal for hearing;<sup>1</sup>
- 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; and
- Educating the public and public officers about FOI and privacy.

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<sup>1</sup> For complaints made before 1 May 2016, the Information Commissioner is responsible for the making of binding orders and compensation payments of up to \$60,000.

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 provided more flexibility to the Commissioner's staff to conduct mediation at any stage in the complaints process and this has led to the early resolution of a greater number of complaints. The changes also allow the Commissioner to refer a matter 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 or 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 after 1 May 2016 are referred to the Northern Territory Civil and Administrative Tribunal (NTCAT). On 31 July 2018, the Tribunal published related decisions in *Morris & Green v Department of Primary Industry & Resources, McArthur River Mining Pty Ltd & Information Commissioner*.<sup>2</sup>

To date, no further complaints have been referred for hearing to the Tribunal.

## 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*.

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

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<sup>2</sup>See <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nt/NTCAT/2017/573.html> and <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nt/NTCAT/2017/469.html>.

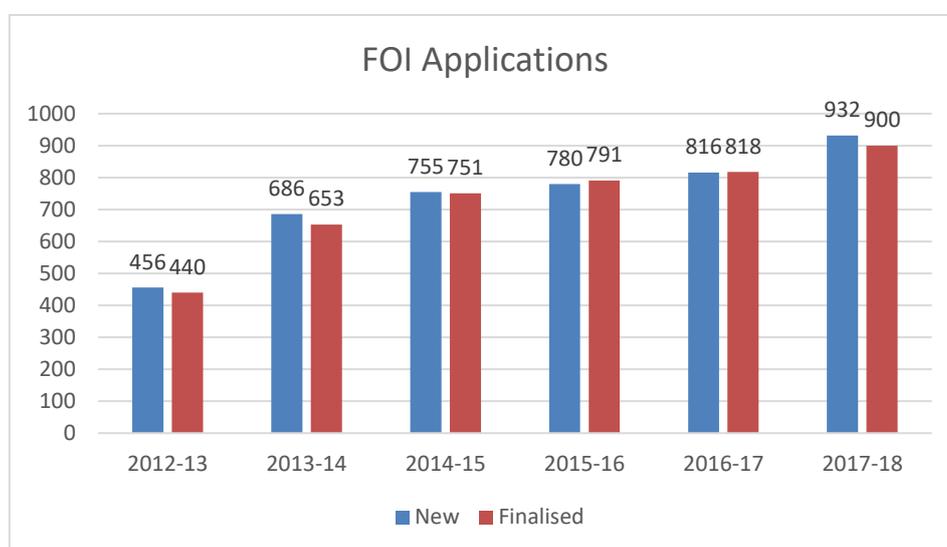
# Freedom of Information

The *Information Act* creates schemes which allow people to access government information (sometimes referred to as 'freedom of information' or FOI).

Section 98 of the *Information Act* requires the Commissioner to report annually to the Minister on the operations of the Office. 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 2. The information below gives a general overview of that data.

## FOI applications received and handled by public sector organisations

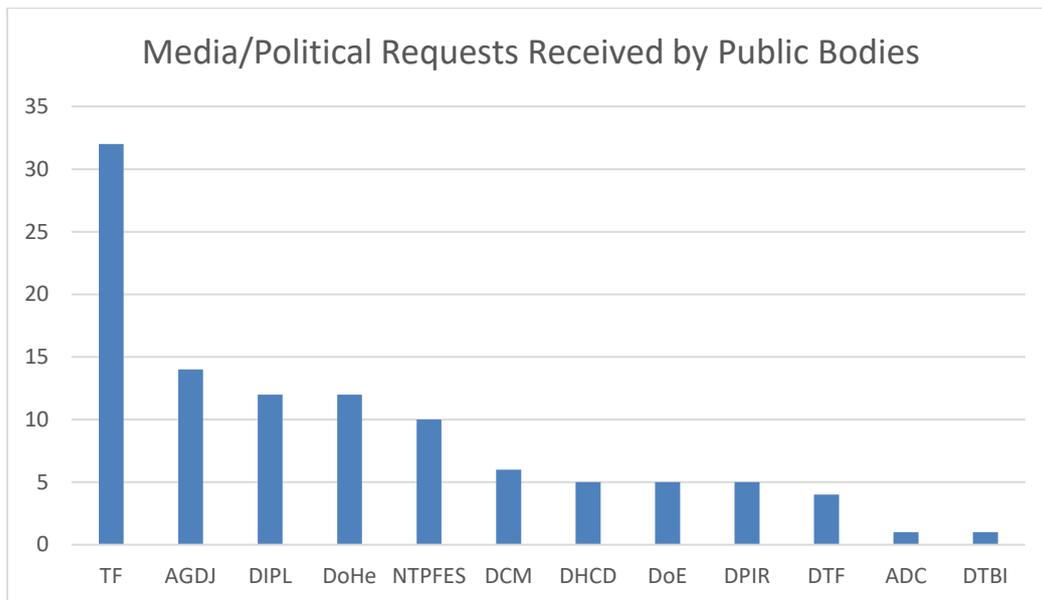
For several years, the number of FOI applications made to public sector organisations has been increasing. In 2017/18, the increase (as shown in the table below) was considerable.



Not surprisingly, by far the most FOI applications continue to be made to large Government Departments. The Department of Health received the highest number of applications of any public sector organisation (*306 applications*), followed by the Department of Housing and Community Development (*134 applications*), the Department of the Attorney-General and Justice which includes Corrections (*129 applications*) and the Northern Territory Police Fire and Emergency Services (*114 applications*). Although these agencies appear to be coping with the increased workload, this Office will continue to collect annual data on complaint numbers and timeliness to monitor case management.

Smaller Departments, Councils and Independent Statutory Offices receive few applications which can cause difficulties for them in trying to maintain staff with the expertise to process FOI requests. This Office assists them by providing technical and policy advice on the Act and regular FOI training opportunities through an experienced trainer.

During 2017/18, approximately two thirds of FOI applications handled by organisations were from individuals seeking personal information about themselves or others. The remaining third of the applications sought purely non-personal information. Around 10% (107) of all FOI applications were received from applicants with a political, media, activist or lobby-group background.

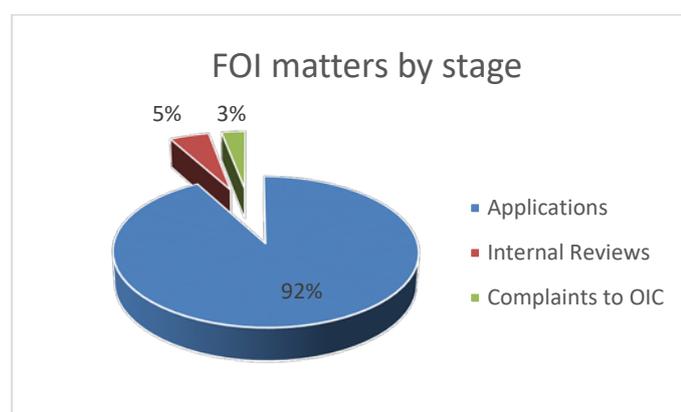


Proportionally high numbers of applications of this kind were handled by Territory Families, followed by the Department of Attorney-General and Justice (which now includes Correctional Services), the Department of Infrastructure, Planning and Logistics, the Department of Health and Northern Territory Police Fire and Emergency Services.

### 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, 46 new internal review applications were lodged with various organisations, with three review applications open at the start of the year, totalling 49 reviews having been handled. Of these 49 internal reviews, only 15 matters remained unresolved and 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 2017/18 reporting period:

<b>Applications</b>	92%	981
<b>Internal Reviews</b>	5%	49
<b>Complaints to OIC</b>	3%	31



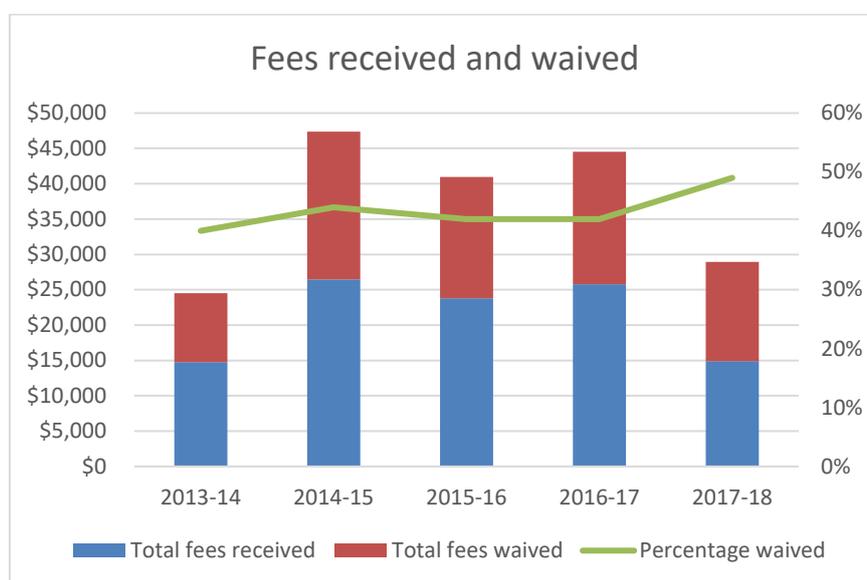
Under recent amendments (s39A), organisations are now able to refer an application for internal review directly to the Information Commissioner to handle as a complaint. This year the Commissioner received three referral applications - one from the NT Legal Aid Commission and two from the City of Darwin.

## 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 intended to act as 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 although it is noted that total fees received and waived in 2017/18 were lower than they have been since 2013/14. The statistics collected in 2018/19 will provide insight as to whether this reduction is a temporary variation or a continuing trend.

### 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%
2017-18	\$14,899	\$14,041	49%



## On what grounds was information not released?

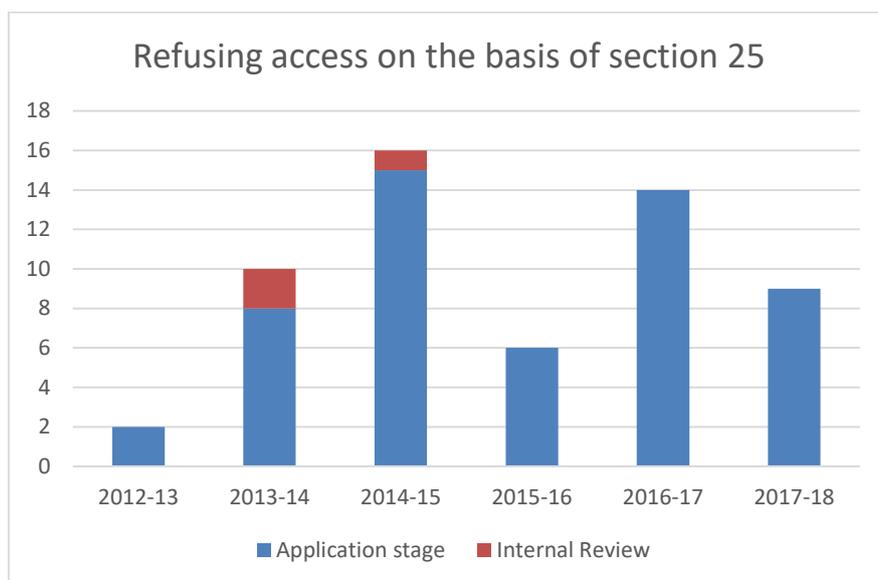
The *Information Act* provides a number of exemptions that may be used by organisations to withhold information from release. Table 4 in Appendix 2 provides details of the type of exemptions used. The most widely used exemptions in this reporting period were those aimed at protecting:

- privacy of third parties (section 56) – relied on by 19 organisations;
- non-commercial information confidentially obtained (section 55) – relied on by 9 organisations;
- deliberative processes (section 52) –relied on by 9 organisations;
- affecting the effective operations of the organisation (section 53) – relied on by 8 organisations;
- commercial in confidence information (section 57) – relied on by 8 organisations;
- preservation of the system of justice (section 49) – relied on by 7 organisations.

As in previous years, a large proportion of the information not disclosed was 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 organisations has led to a more careful evaluation of the time they spend on some FOI applications. This reporting period, a refusal to provide access to information was based on section 25 on 9 occasions.



## Correction Applications

As in previous years, the scheme in the Act which allows people to apply to correct their own personal information (Part 3 Division 3) has been rarely utilised. Anecdotal information suggests that the correction of an error in personal information held by an organisation about an individual is often resolved without the need for a formal application being made. No doubt the difficult matters where organisations are reluctant to amend the record are the ones that result in formal correction applications being made. The refusal to correct may be because the organisation does not consider that there is an error on the file or they may consider that the error/wrong information is an important part of the historical record that must be retained. If the latter is the issue, then a notation can be placed on the file to record the applicant's concerns. This was the action taken by one organisation in order to resolve a matter during the reporting period.

During 2017/18, 12 applications to correct personal information were received by organisations. It appears that no corrections to the record were made by the relevant organisations as a result of these applications but one individual with 7 correction applications to the same organisation has sought an external review by our Office of the organisation's refusal to correct the record. As these 7 matters relate to the same parties, they are being dealt with as one complaint to our Office for statistical purposes. That complaint is currently under review. (More details are included at Appendix 2, Table 2)

## Number of FOI complaints and their outcome

This year, the Office of the Information Commissioner handled a total of 31 FOI complaints. Of the 20 matters that were resolved in the reporting period, only 2 matters were decided by formal hearing, one by NTCAT and one by the Information Commissioner. The table below sets out the outcomes for FOI complaints in this reporting period.

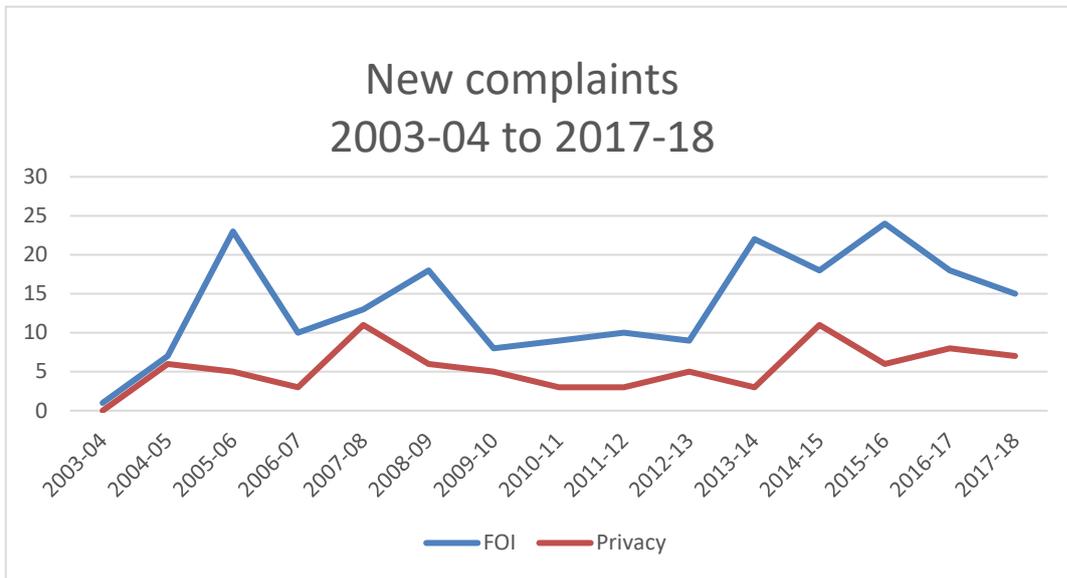
PSO*	Carried Over	New Complaint	s39A **	Handled	s103(2) ***	Resolved informally	Prima Facie	Mediation	Hearing	Open at year's end
AGDJ	5	1		6		1	4	1		1
CDU		1		1						1
CoD		3		3	2	1				
CoP	2			2		2				
DoE	2	1		3		2				1
DoH		1		1						1
DPIR	3	4		7		1			1	5
DTF	1			1		1				
NTEC	1			1			1	1	1	
NTLAC		1	1	2	1					1
NTPFES	1	1		2		1				1
TIO	1			1		1				
TRB		1		1		1				
<b>TOTAL</b>	<b>16</b>	<b>14</b>	<b>1</b>	<b>31</b>	<b>3</b>	<b>11</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>11</b>

\* Refer to Appendix 2 for details of acronyms for organisations

\*\* Section 39A-No internal review-instead sent direct to the OIC by organisation

\*\*\* Section 103(2) -Referred back to organisation by Commissioner to conduct further internal review.

The number of FOI 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 received from the start of the legislation to the current year demonstrates the variation in complaint numbers.



What is clear however, is that in recent years the number of FOI complaints handled (including those carried over from the previous year) has consistently been much higher than the Key Performance Indicator of 20.

### FOI complaints handled within 12 months

Year	Estimate	Actual
<b>2017-18</b>	20	31
<b>2016-17</b>	20	35
<b>2015-16</b>	20	46

### New Timeliness measure for FOI

At the end of this reporting period, organisations were asked to provide statistical data regarding their timeliness in finalising FOI applications within the 30 day statutory timeframe or any valid extension period. The extension period makes allowance for reasonable delays in processing large applications or in consulting third parties if their personal or confidential information is intended to be released.

Organisations reported a finalisation of applications within the required timeframe in 9 out of 10 matters. Noting the large increase in FOI applications received by organisations in recent times, this result was surprising but pleasing. Data on this new measure will be collected annually as it will provide a good indicator of how public bodies are managing an increasing workload.

## FOI Case studies

Two hearing decisions were published during the reporting period and are summarised below. Also included are some case studies that provide insight into the review process and reflect the emphasis the Office has placed on early resolution where possible. Some facts have been changed slightly to protect privacy.

### [Hearing Decision-Foundation 51](#)

In mid 2017, three related decisions were published on the Information Commissioner's website in *Phillips v Electoral Commission & Foundation 51- Numbers 2, 3 and 4 of 2017*<sup>3</sup>.

This matter was heard by the Information Commissioner because the complaint arose before legislative change transferred the hearing power to Northern Territory Civil and Administrative Appeals Tribunal (NTCAT).

The hearing related to a complaint made to the Information Commissioner about the refusal of the Northern Territory Electoral Commission (the First Respondent) to provide Mr Phillips (the Complainant) with certain government information. The information sought by the Complainant was held by the First Respondent as a result of their investigation into alleged breaches of the *Electoral Act* by Foundation 51 Pty Ltd.

The First Respondent released a considerable number of documents to the Complainant but refused to release others on public interest grounds. Many of the documents where access was refused were commercial and financial documents of Foundation 51 Pty Ltd. The Complainant sought a review by the Commissioner of the First Respondent's decision and ultimately narrowed the scope of his complaint to the refusal to grant him access to Foundation 51 documents only.

In a preliminary decision, the Commissioner considered the standing of Foundation 51 Pty Ltd to be a third party Respondent in these proceedings, noting that it had been deregistered for some time. The Commissioner decided that a deregistered company had no standing as a party to an FOI complaint and its former director, Mr Lewis, could not purport to speak for the company in these circumstances. Further, on the evidence provided, the Commissioner decided that there was no evidence of a continuing Foundation 51 'business, commercial or financial undertaking' that should be joined as a Respondent on the basis that it would be affected by the release of its financial and other documents. Finally, the submission of Mr Lewis that he had standing to complain in his own right as a 'person aggrieved' was not accepted because the documents in dispute were clearly documents of the former company and not of a personal nature. The impact of this preliminary decision was that Foundation 51 was no longer a party to the proceedings.

The disputed Foundation 51 documents were financial and bank statements, presentations to members by guest speakers, promotional material and reports on research projects undertaken by or on behalf of Foundation 51. The First Respondent refused the Complainant access to these documents on the grounds that they were of a business, commercial or financial nature and their disclosure was likely to expose that undertaking (Foundation 51) unreasonably to disadvantage. After considering the documents in question and noting that

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<sup>3</sup> See <https://infocomm.nt.gov.au/resources/decisions-and-case-notes>

there was no 'business, commercial or financial undertaking' in existence, the Commissioner decided that all of the documents should be released to the Complainant unredacted. The decision was not made on the basis that the controversy and media surrounding Foundation 51 made it 'of interest to the public' but because they raised legitimate questions of public interest. After hearing submissions from the parties and Mr Lewis, a further order was made that the decision should be published in the public interest.

### Hearing Decision-Publication of Security Bond

In July 2017, two related decisions of the Northern Territory Civil and Administrative Appeals Tribunal (NTCAT) were published in *Morris & Green v Department of Primary Industry and Resources, McArthur River Mining & Information Commissioner* [2017] NTCAT 469 and [2017] NTCAT 573. The Applicants challenged an FOI decision made by the Department refusing to provide them with details of the revised amount of the security bond required the Northern Territory Government from McArthur River Mining Pty Ltd (MRM). The Department had provided documents to the Applicants but had redacted the amount of the security bond.

The Department justified its refusal on the grounds that the security bond amount was reached after consultation with MRM and was exempt from disclosure on public interest grounds. They applied sections 50 and 57 of the Act and advised that disclosure of the security bond sum would disclose information of a business, commercial or financial nature obtained from a business, commercial or financial undertaking and such exposure would unreasonably expose the undertaking to disadvantage.

The Applicant complained to the Information Commissioner about the Department's decision. A delegate of the Information Commissioner investigated and reached a prima facie conclusion that the Applicant's complaint had substance and the matter was referred to NTCAT for determination. The delegate's reasoning was that the information regarding the amount of the security bond was not 'information obtained by a public sector organisation from a business, commercial or financial undertaking' because the amount of the security bond 'was determined by either the Department or the Minister'.

The Tribunal ultimately agreed with the delegate's decision on this issue and decided that the documents should be released in their unredacted form, that is, with the sums relevant to the quantum of the bond disclosed.

The Tribunal also considered other matters relating to the interpretation of the Act. In its decision the Tribunal referred to *Lobo and Department of Immigration and Citizenship* [2011] AATA 583 and, applying similar reasoning, noted that there is no express provision in the NT *Information Act* for the amendment of a Freedom of Information Application. This was relevant to the matter because the written FOI application sought the current security bond figure but the Applicant and the Department proceeded on the basis that the Applicant was actually wanting the revised security bond figure that had been decided but not yet imposed. On the particular facts before it, the Tribunal accepted the parties' view on the nature of the application made.

The Tribunal also considered the application of section 125 of the Act which places the onus and burden of proof on the Respondent to prove on the balance of probabilities that the information refused is exempt under the Act. The decision of the Department to take an abiding role at hearing meant that the submissions of MRM were important in discharging the onus. Despite the fact that MRM had only been 'provisionally joined' as a Respondent by

the delegate of the Information Commissioner (rather than formally joined as a respondent under section 109A of the Act), the Tribunal accepted their submissions as the submissions of the Respondent. The Tribunal noted that the delegate's reluctance to join MRM as a Respondent under section 109A was because that section allows joinder of 'a person' - which is defined under the Act as an individual (not a corporation or other entity). Despite the narrow definition of 'a person' under the Act, the Tribunal interpreted the joinder power under section 109A to extend to commercial entities who were consulted as third parties.

The Tribunal refused an application by the Australian newspaper to attend the hearing (which are normally held in private) but considered that its reasons for decision should be published in the public interest.<sup>4</sup>

### *Unreasonable Interference with Operations*

A complaint was received by the Commissioner regarding a decision made by an Organisation refusing the Complainant access to information. They argued that providing access would unreasonably interfere with the operations of the Organisation (section 25 of the Act). This section provides an organisation with the ability to refuse requests that will impact unreasonably on their work. The onus of proof is on the Organisation to establish that the Complainant is not entitled to the relevant information.

The FOI application sought all personal information about the Complainant in both his former name and his current name that was held in the email account of public officer X or on any computer drive used by the organisation. The timeframe for the search was for a period of more than 3 years.

The Organisation asked the complainant to review the scope of his request. They provided a written estimate of the time required to process the request, detailing the methodology used to determine the estimate. They concluded that:

- (i) the search of public officer X's TRIM (the official records management system) records identified over 1,300 documents which were responsive to the request;
- (ii) 65% of the documents contained attachments comprising an average of between 14 and 26 pages (i.e. nearly 12,000 pages);
- (iii) sampling of the time taken to extract the documents from the system gave an average of 5 minutes 16 seconds for each document with attachments (i.e. over 70 hours in total);
- (iv) assessing the documents for release to determine whether any exemption applied would take at least one minute per page (i.e. a further 198 hours);
- (v) the total processing time would be 268 hours, a substantial volume of work which would constitute an unreasonable interference with the work of the Organisation.

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<sup>4</sup> See <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nt/NTCAT/2017/573.html> and <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nt/NTCAT/2017/469.html>.

In response, the Complainant sought a reduction of scope to his current name only. He challenged the sampling technique employed by the Organisation, suggesting many of the attachments would be duplicates.

The Organisation responded that the reduction in scope would only amount to a 10% to 20% reduction. They provided further detail of their sampling methodology and confirmed that their estimates did not contain a large number of duplicates. They revisited their sampling methods and estimates on two further occasions and reduced their total hours to 190 hours and later to 120 hours but confirmed that this would still constitute an unreasonable interference with their work.

Further consultation between the parties failed to reach an agreement of reasonable search parameters and the Organisation refused the Complainant access under section 25 of the Act.

The Complainant sought an internal review and Officer Y was asked to undertake it. Officer Y advised the Complainant that "Having regard to the multiple sampling that occurred and the conservative application of pages and time averages applied, it would appear that the sampling results are sound and that the total pages and time estimated for the application would be lower than the actual total. The process and methodology used in processing the application was, essentially, in the applicant's favour." Officer Y's review decision confirmed the original decision refusing access under section 25 of the Act.

On external review, the Commissioner's delegate noted the factors that should be considered in making a decision under section 25. She referred to comparative cases interstate such as *Cianfrano v Director General, Premier's Department* [2006] NSWADT 137 (9 May 2006) and *Smeaton v Victorian WorkCover Authority (General)* [2012] VCAT 1550. She took into account many matters including the Objects of the Act, the clarity and manageability of the FOI request, the public interest in disclosure of the documents sought, the size of the agency and its resources usually available for dealing with access applications, the Respondent's time estimate and the resource costs in providing the documents, the cooperative approach of both parties, whether the applicant was a repeat applicant to that agency, and the extent to which the present application may have been adequately met by previous applications to the agency. After receiving submissions from both parties and taking account of all of the above factors, the Commissioner's delegate found that there was insufficient prima facie evidence to substantiate the complaint about the Organisation's refusal decision and the complaint was dismissed.

### [To review or not to review](#)

A relatively recent addition to the *Information Act* (Section 39A) gives organisations the discretion to skip the requirement for an internal review of their FOI decision, enabling them to forward the matter directly to the Information Commissioner for external review. Although this provision is not widely used, it can be useful on occasion. A small organisation with a limited number of staff referred an FOI application to the Information Commissioner under section 39A. The Commissioner accepted the complaint but became concerned that the Organisation's decision on release did not sufficiently clarify their reasoning for refusing access to some documents. After discussion, the matter was referred back to the Organisation under section 103(2) of the Act to enable them to review their decision and explain their reasoning in more detail. The Complainant was not satisfied with the review decision and

later complained to this Office. The complaint will now proceed through the external review process with a much clearer understanding of the matters in dispute.

### Sufficiency of Search

Records management guidelines require some important documents to be kept forever but other less important documents to be disposed of by an organisation after a defined period. A complainant expressed concerns that he had not received all of the documents sought by him through FOI and he thought the organisation was hiding information from him. Some of the documents sought were emails from a decade ago. Also sought was CCTV security footage from 2017. The Commissioner's delegate was able to investigate and confirm to the Complainant that these documents no longer existed. Government policy is that the email accounts of former employees are decommissioned upon termination of their employment so cannot be searched. The agency's email vault and secondary storage (back up tapes) did not hold these emails either. The more recent video footage was sought months after an alleged incident took place and the tape had already been re-used in accordance with the agency's internal guidelines. The Commissioner's delegate advised the parties that she was satisfied that no further documents were retained by the organisation and that their internal searches had been sufficient.



## Privacy

The Information Commissioner is the ‘privacy watchdog’ for the Northern Territory public sector. The Commissioner and staff (the Office) investigate and mediate privacy complaints made by an individual against a public sector organisation in circumstances where the organisation has been unable to resolve the complaint. If complaints don’t resolve, the Northern Territory Civil Administrative Tribunal (NTCAT) is empowered to conduct a hearing to decide whether or not a privacy breach has occurred and whether orders should be made to rectify the breach or compensate the complainant. No complaints of a privacy breach have been referred for hearing to the NTCAT to date.

The Office also allocates significant resources to educating public officers about their privacy obligations and to providing advice and public comment on proposed legislative change or new initiatives that impact on privacy rights.

Finally, the Office provides education and advice to the public on their rights under the *Information Act*.

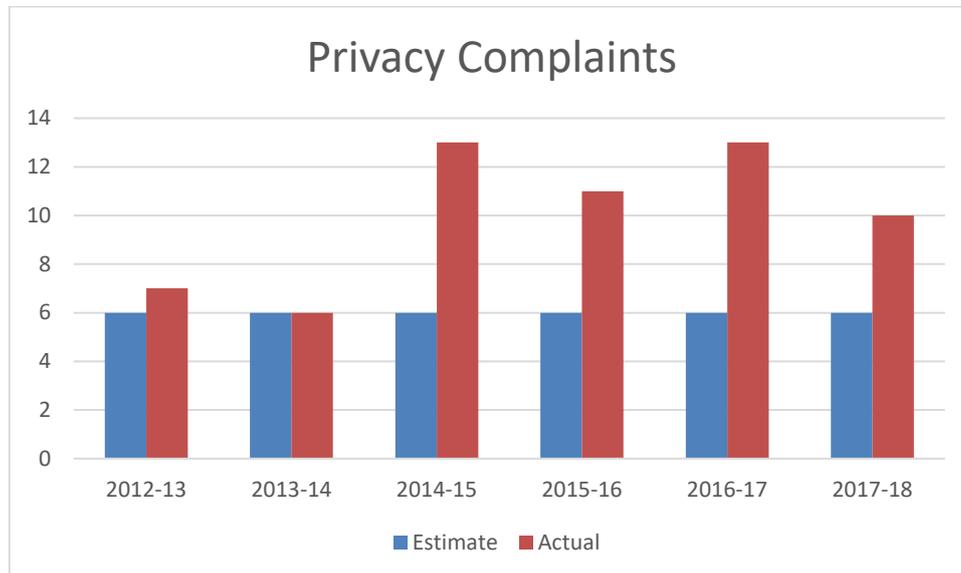
## Privacy Complaints Handled by Public Sector Organisations

Reporting requirements for agencies in relation to privacy complaints are not as structured as for FOI complaints. At the end of 2017/18, the Office asked public sector organisations to provide some feedback on how they were managing their privacy complaints.

The responses received raised no immediate issues with the way in which organisations are managing privacy complaints. The number of formal complaints received from individuals was relatively low and most were resolved within 60 days. This feedback is supported by the fact that the number of (external review) complaints received by our Office about the decisions of organisations were also comparatively small.

Anecdotal evidence supports the view that many organisations successfully manage many privacy complaints informally or through internal administrative schemes. They acknowledge the breach and apologise to the individual and this is often sufficient to resolve the matter. Even so, this is an area that the Office considers merits further work in 2018/19 in order to raise community awareness of privacy rights and enhance complaint management within some organisations.

The number of privacy complaints (external reviews from decisions of organisations) received by this Office until recent years has remained fairly steady. There has been a measurable increase in complaints however in the past 4 reporting periods - a change that this Office is monitoring.



## Overview of privacy complaints handled by OIC in 2017/18

Ten privacy complaints were handled by this Office during the reporting period and five were resolved.

PSO	Carried over	New complaints	Handled	Resolved informally	Prima Facie	Mediation	Open at year's end
AGD		1	1	1			1
DoE		1	1				
DoH	3	2	5	2	2	1	2
TF		1	1	1			
NTPFES		2	2				2
<b>TOTAL</b>	3	7	10	4	2	1	5

Wherever possible, matters were resolved informally during the complaint process. The Privacy Case Study titled *Disposed of by Mistake* is a good example of a complaint that benefitted from being resolved informally with assistance from our Office.

### Privacy Case Studies

#### [Disposed of by Mistake](#)

The Information Commissioner received a complaint from an individual about an alleged breach of privacy by an Organisation. The Organisation had earlier notified the Complainant by letter that personal information about him and his family had been taken by mistake to a public waste management facility for disposal. The Complainant contacted the Organisation and sought information about the types of documents that had been improperly disposed of and confirmation that all of those documents had been retrieved. Being distressed by the privacy breach and dissatisfied with the initial response by the Organisation, the individual complained to the Information Commissioner.

The matter was investigated by this Office and an early meeting was convened between the Complainant and the Organisation to discuss the circumstances of the information loss and retrieval and the impact that the incident had had on the Complainant and his family. Following this meeting but prior to a formal mediation, the Commissioner's delegate sent the parties a comprehensive letter setting out full details about the loss and retrieval of the personal information, the Organisation's response to the incident including their dealings with the Complainant, a summary of the internal and external reviews undertaken, the Organisation's response to those reviews and the implementation of the reviews' recommendations. The delegate's letter also explored possible breaches of the Information Privacy Principles by the Organisation and provided some background information and comparative cases to assist an early settlement. The matter was soon resolved to the parties' satisfaction after further private discussion between them and the complaint made to our Office was discontinued.

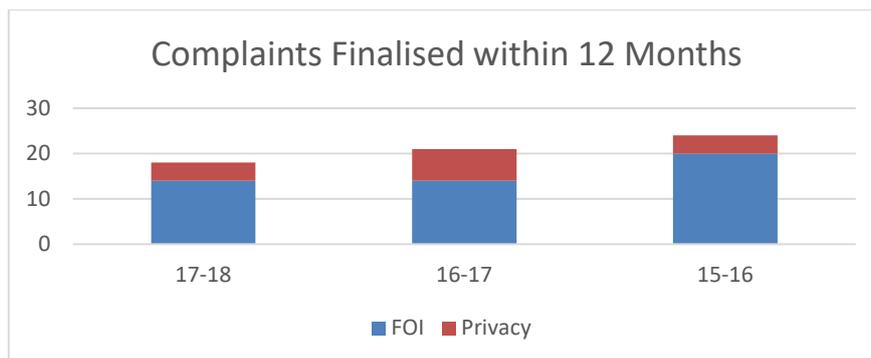
### *Collected for One Purpose - Used for Another*

A complaint was received by our Office alleging that personal information that an individual provided to an Organisation for one purpose had been used and disclosed to others for an improper secondary purpose, causing harm to his reputation. Even before the complaint was formally accepted, discussions between our Office and the parties assisted in clarifying the issues in dispute and in ultimately assisting them in reaching a resolution. The Organisation investigated the breach internally and undertook disciplinary action against the public officers involved. They formally apologised to the Complainant for the privacy breach and asked the Commissioner to arrange for privacy training to be provided to their staff. Training in various regions commenced in August 2018 and will be completed in the near future.

# Performance Comparisons for OIC

## Timeliness – resolving complaints within 12 months

The vast majority of complaints were completed promptly and to the satisfaction of the parties. 14 out of 20 (or 70%) of the FOI complaints and 4 out of 5 (or 80%) of the Privacy complaints were finalised within 12 months. This year, unavoidable delays were experienced in some matters where contact with the complainant was difficult to maintain or in matters that failed to resolve and proceeded to hearing.



## Quantity – training, education and awareness

Comparative Performance		17-18	16-17	15-16
<b>Quantity</b>	Awareness and training presentations			
	- Number of presentations	18	10	27
	- Number of participants	347	321	446

## Quality – training, education and awareness

Comparative Performance		17-18	16-17	15-16
<b>Quantity</b>	Stakeholder satisfaction with performance	83%	82%	78%

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

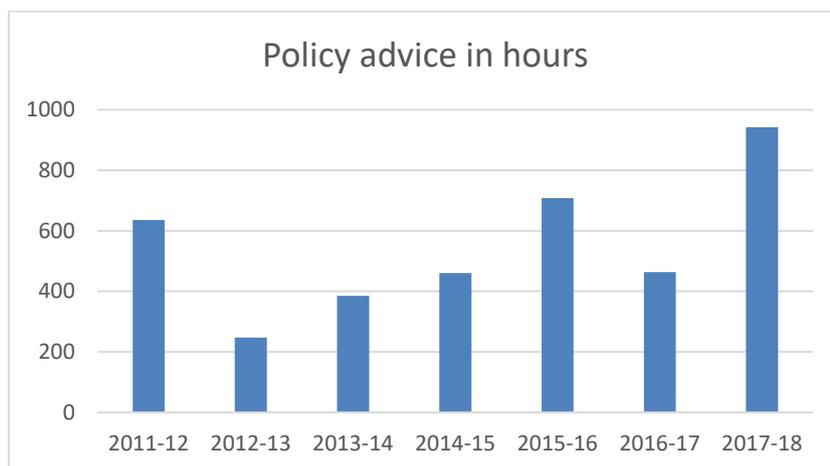
Comparative Performance		17-18	16-17	15-16
<b>Quantity</b>	FOI and Privacy Policy hours (advices and audits)	943	464	708

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

## Advice and Public Comment

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
2017-18	943



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;
- Providing advice to agencies regarding participation in national initiatives;
- 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 requirements for protecting information that is transferred interstate and overseas;
- Providing advice on the appropriate use of CCTV and its release under Freedom of Information;
- Providing advice on privacy to individuals and organisations involved in Territory and National initiatives such as the National Drivers Licence Facial Recognition Solution and Identity Matching Services;
- Providing advice and comment on collaborative research proposals involving the sharing of personal information.

Public Comment and formal submissions were made on various matters including:

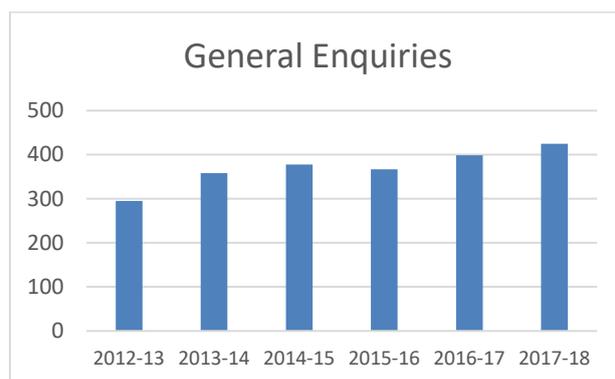
- A submission to the Social Policy Scrutiny Committee of the NT Legislative Assembly on the Domestic and Family Violence (Information Sharing) Bill (January 2018);
- A submission to the Social Policy Scrutiny Committee of the NT Legislative Assembly on the Criminal Code (Intimate Images) Bill (January 2018);
- A submission to the Social Policy Scrutiny Committee of the NT Legislative Assembly on the ICAC Bill (October 2017);
- A submission to the Inquiry conducted by Mansfield J regarding Options for Reform of Political Funding and Donations in the NT (December 2017).

#### New Guidelines:

In collaboration with the Department of Education, a New Privacy Impact Assessment tool was also published to assist organisations in assessing privacy risks when developing new legislation and new initiatives.

### General Enquiries

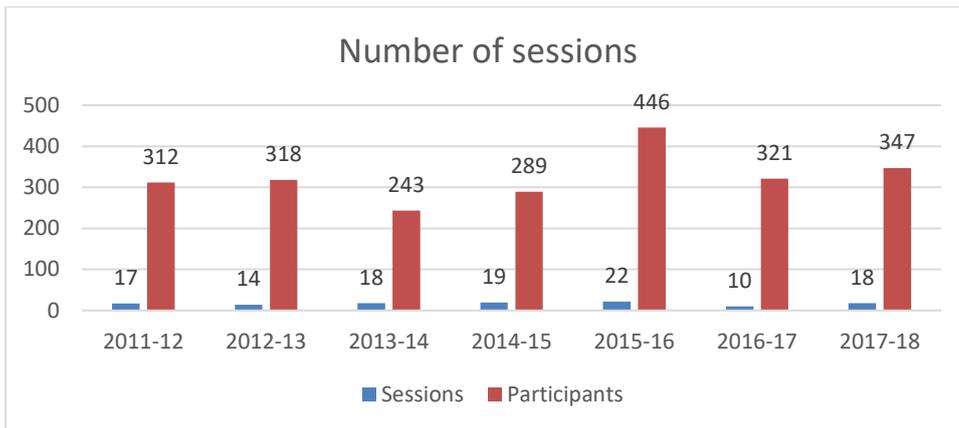
In addition to providing detailed policy advice to agencies, the Office receives general enquiries via telephone and email from public officers, community members and non-government organisations. During 2017/18, there were 425 such enquiries recorded. These numbers have always been a very conservative estimate only as some queries are relatively simple and not necessarily recorded.



### Awareness, education and training

During 2017/18, the Office organised 18 training sessions with a total of 347 participants as follows:

- **Training sessions** for large and small groups, tailored to specific needs. The Office delivered 9 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 held on 28 March 2018 covered topics including the Commonwealth Mandatory Data Breach Notification scheme, myHealthRecord and the creation of a guideline for dealing with privacy complaints.
- **Expert FOI training** for public officers from an interstate consultant in the form of a two-day course. This year, two courses were held, in August 2017 and April 2018, with 38 officers attending the training.



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 83%, which is within the range for the past five year period (76% to 85%).

## Community Awareness

### Promotional Activities

Promotional activities this year included an information stall at the Seniors Expo during Seniors Month in August 2017 and a promotional stand with other independent bodies at the NT Supreme Court Open Day on 2 September 2017.

### Privacy Awareness Week

Privacy Awareness Week (PAW) is an annual initiative, which the Office of the Information Commissioner celebrated from 7-11 May this year. The Commissioner invited long term Information Officers to a morning tea and publicly recognised the commitment and enthusiasm of two Information Officers in promoting privacy awareness within their agencies.

Promoting a privacy awareness theme through PAW is a joint initiative of privacy and data protection agencies across the Asia Pacific region, who belong to the Asia Pacific Privacy Authorities (APPA) forum. The jointly adopted theme this year was *“Privacy: from Principles to Practice”*. To help promote privacy awareness, the Office produced a desk card with basic privacy information and contact details for the information/privacy officers in all work areas.

# APPENDICES

## Appendix 1 - Statement of Financial Performance

As the Office of the Information Commissioner was co-located with the Office of Public Interest Disclosures for the 2017/18 financial year the financial information presented below includes costs for both offices during the period.

**OFFICE OF THE INFORMATION COMMISSIONER, PUBLIC INTEREST DISCLOSURES**  
**Statement of Financial Performance**  
**For the year ended 30th June 2018**

	<b>2018</b>	<b>2017</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>INCOME</b>		
Appropriation - Output	798	865
<b>TOTAL INCOME</b>	<b>798</b>	<b>865</b>
<b>EXPENSES</b>		
Employee Expenses	882	923
Administrative Expenses		
Purchase of Goods and Service		
Repairs, Maintenance and Property Management	3	8
Accommodation	3	3
Advertising	-1	2
Agent Service Arrangements	3	1
Bank Charges	-	1
Communications	13	17
Consultants Fees (including IT Consultants)	2	13
Consumables / General Expenses	2	3
Entertainment / Hospitality	1	-
Information Technology Charges	32	42
Insurance Premiums	29	-
IT Hardware and Software Expenses	6	1
Legal Expenses	5	52
Library Services	-	1
Marketing & Promotion	1	-
Medical/Dental Supply and Services	2	2
Memberships and Subscriptions	1	2
Motor Vehicle Expenses	6	3
Office Requisites and Stationery	1	2
Official Duty Fares	3	7
Other Equipment Expenses	4	9
Training and Study Expenses	10	11
Travelling Allowances	1	2
<b>TOTAL EXPENSES</b>	<b>1 014</b>	<b>1 104</b>
<b>NET SURPLUS / (DEFICIT)</b>	<b>(216)</b>	<b>(239)</b>

**Notes**

As a result of changes to Agency reporting arrangements, DCIS Free of Charge is now reported centrally. The 2017 comparative has been restated to reflect this change.

## Appendix 2 – Statistics by Public Sector Organisation

A number of public sector organisations received FOI applications during 2017/18 as detailed in the following tables. We appreciate their co-operation and assistance in the timely and accurate reporting of the relevant information for this report.

### Abbreviations for the public sector organisations used in the tables:

ADC	Anti-Discrimination Commission
AGDJ	Attorney-General and Justice (Dept of the)
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)
DHCD	Housing and Community Development (Dept of)
DIPL	Infrastructure, Planning and Logistics (Dept of)
DLA	Legislative Assembly (Dept of)
DoE	Education (Dept of)
DoH	Health (Dept of)
DPIR	Primary Industry and Resources (Dept of)
DTBI	Trade, Business and Innovation (Dept of)
DTC	Tourism and Culture (Dept of)
DTF	Treasury and Finance (Dept of)
LC	Litchfield Council
NTLAC	NT Legal Aid Commission
NTPFES	NT Police, Fire and Emergency Services
PWC	Power and Water Corporation
RGRC	Roper Gulf Regional Council
TF	Territory Families. Previously Children and Families (Dept of)
TIO	Territory Insurance Office
TRB	Teacher Registration Board of the Northern Territory

**TABLE 1 – Information access applications and their outcome 2017-18**

PSO	Lodged 17-18	Pending 16-17	Handled 17-18	Information released			Withdraw 17-18	Transfer 17-18	Finalise 17-18	Pending 17-18	Total Handled	Exemption used	Other reason	Personal info	Mixed info	Govt only	Media lobby etc	Back-up Tapes
				All	Part	None												
ADC	1	0	1	0	0	1	0	0	1	0	1	1	0	0	0	1	1	0
AGDJ	129	6	135	56	2	53	4	4	119	16	135	54	5	110	2	23	14	0
ASTC	1	0	1	1	0	0	0	0	1	0	1	0	0	1	0	0	0	0
CDU	11	0	11	2	1	8	0	0	11	0	11	9	0	11	0	0	0	0
CoD	16	1	17	4	10	2	1	0	17	0	17	12	0	3	0	14	0	0
CoP	12	0	12	0	11	0	0	0	11	1	12	11	1	0	0	12	0	1
DCIS	6	0	6	1	2	0	1	0	4	2	6	2	1	5	0	1	0	1
DCM	11	1	12	0	0	8	0	2	10	2	12	1	7	0	0	12	6	0
DENR	11	0	11	6	0	3	1	0	10	1	11	0	0	0	0	3	0	0
DHCD	134	0	134	3	118	10	3	0	134	0	134	118	0	128	1	5	5	0
DIPL	23	2	25	9	4	1	6	1	21	4	25	4	0	2	0	21	12	0
DLA	3	0	3	0	0	2	0	0	2	1	3	0	3	0	0	3	0	0
DoE	37	4	41	6	17	10	0	1	34	7	41	17	10	24	7	10	5	0
DoH	306	11	317	178	28	86	12	3	307	10	317	23	32	237	3	77	12	0
DPIR	14	1	15	1	2	4	1	1	9	6	15	3	3	3	0	12	5	0
DTBI	5	2	7	1	3	0	2	1	7	0	7	3	0	0	0	7	1	0
DTC	2	1	3	1	0	0	1	0	2	1	3	0	0	1	1	1	0	0
DTF	6	1	7	1	1	1	1	1	5	2	7	1	0	1	0	6	4	0
LC	2	0	2	0	2	0	0	0	2	0	2	2	0	0	0	2	0	0
NTLAC	2	0	2	0	2	0	0	0	2	0	2	1	1	0	2	0	0	0
NTPFES	114	6	120	14	48	27	6	0	95	25	120	53	23	41	20	59	10	0
PWCNT	7	0	7	0	0	7	0	0	7	0	7	7	0	1	0	6	0	0
RGRC	1	0	1	0	0	1	0	0	1	0	1	0	1	0	1	0	0	0
TF	73	12	85	6	45	22	9	0	82	3	85	45	9	73	3	9	32	0
TIO	4	0	4	2	0	0	0	2	4	0	4	0	0	0	0	0	0	0
TRB	1	1	2	0	2	0	0	0	2	0	2	2	0	2	0	0	0	0
<b>TOTALS</b>	<b>932</b>	<b>49</b>	<b>981</b>	<b>292</b>	<b>298</b>	<b>246</b>	<b>48</b>	<b>16</b>	<b>900</b>	<b>81</b>	<b>981</b>	<b>369</b>	<b>96</b>	<b>643</b>	<b>40</b>	<b>284</b>	<b>107</b>	<b>2</b>

**TABLE 2 – Information correction applications and their outcome 2017-18**

PSO	Lodged	Pending	Handled	As requested	Other form	No correction	Withdrawn	finalised	Pending	Handled	Statement
DoH	4	1	5	0	1	1	1	3	2	5	1
DTF	0	0	0	0	0	0	0	0	0	0	0
CDU	7	0	7	0	0	6	0	6	1	7	0
TF	0	2	2	0	0	2	0	2	0	2	0
NTPFES	1	0	1	0	0	1	0	1	0	1	0
<b>TOTALS</b>	<b>12</b>	<b>3</b>	<b>15</b>	<b>0</b>	<b>1</b>	<b>10</b>	<b>1</b>	<b>12</b>	<b>3</b>	<b>15</b>	<b>1</b>

**TABLE 3 – Internal Review applications and their outcome 2017-18**

PSO	Handled during 17-18					Finalised during 17-18*					Total Finalised 17-18	Pending End 2017-18
	Pending 16-17	Lodged 17-18	S103(2)*	Handled 17-18	Decision confirmed	Decision varied/revoked	More info located	More info released	Withdrawn 17-18	Referred s39A		
AGDJ	2	2	0	4	2	2	2	0	0	0	4	0
CoD	0	0	2	2	1	1	0	1	0	0	2	0
CDU	0	11	0	11	11	0	0	0	0	0	11	0
COP	0	3	0	3	0	3	0	3	0	0	3	0
DCM	0	3	0	3	1	2	0	2	0	0	3	0
DHCD	0	1	0	1	1	0	0	0	0	0	1	0
DPIR	0	3	0	3	2	1	0	1	0	0	3	0
DoE	0	3	0	3	3	0	0	0	0	0	3	0
DoH	1	11	0	12	6	4	1	4	0	0	10	2
NTLAC	0	1	1	2	0	1	0	1	0	0	2	0
NTPFES	0	5	0	5	2	1	1	1	0	0	3	2
TF	0	2	0	2	2	0	0	0	0	0	2	0
TRB	0	1	0	1	0	1	0	1	0	1	1	0
<b>TOTALS</b>	<b>3</b>	<b>46</b>	<b>3</b>	<b>52</b>	<b>31</b>	<b>16</b>	<b>4</b>	<b>14</b>	<b>0</b>	<b>1</b>	<b>48</b>	<b>4</b>

**TABLE 4 – Occasions where the following sections of the *Information Act* were relied upon to refuse access to the requested information**

PSO	Exemptions relied on.																At Application (App) and Review (Rev)					
	s45(1)(a)	s45(1)(b)(c)	s46	s47	s48	s49	s49AA	s49A,B, C	s51	s52	s53	s54	s55	s56	s57	s58	s25 App	s25 Rev	s27 App	s27 Rev	Other App	Other Rev
ADC								Y														
AGDJ		Y	Y				Y		Y		Y		Y	Y			2		12		3	
CDU													Y	Y					11	10		
CoD										Y				Y					1	1	1	
CoP									Y					Y			1		2	1	1	
DCIS	Y							Y	Y					Y	Y							
DCM														Y								7
DENR																			3			
DHCD	Y		Y			Y		Y	Y				Y	Y	Y	Y			9		1	
DIPL						Y				Y			Y	Y	Y							
DLA																						2
DoE					Y	Y			Y	Y	Y	Y	Y	Y					7		6	
DoH										Y	Y			Y	Y				29	1	3	
DPIR						Y								Y			1		3			
DTBI	Y							Y	Y				Y	Y	Y		1				2	
DTF														Y					1			
LC														Y								
NLAC									Y				Y	Y			1					
NTPFES			Y			Y			Y	Y				Y	Y				12			
PWCNT										Y			Y	Y								6
RGRC																			1		1	
TF	Y		Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y		3		13		10	
TRB						Y					Y		Y	Y								
TOTAL	4	1	4	1	2	7	1	5	1	9	8	4	9	19	8	1	9	0	104	13	41	0

**TABLE 5 Application Fees received and reduced or waived**

PSO	Number received	Amount received	Number waived	Amount waived
AGDJ	21	\$630.00	4	\$120.00
CoD	10	\$300.00	2	\$60.00
CoP	5	\$150.00	7	\$210.00
DCM	4	\$120.00	0	\$0.00
DENR	7	\$210.00	0	\$210.00
DHCD	4	\$120.00	1	\$30.00
DIPL	19	\$540.00	1	\$30.00
DLA	1	\$30.00	0	\$0.00
DoE	9	\$270.00	1	\$30.00
DoH	32	\$960.00	23	\$690.00
DPIR	6	\$180.00		\$0.00
DTBI	5	\$150.00	1	\$30.00
DTC	2	\$60.00	0	\$0.00
DTF	2	\$60.00	2	\$60.00
LC	2	\$60.00	0	\$0.00
NTPFES	79	\$2,370.00	0	\$0.00
PWCNT	0	\$0.00	5	\$150.00
TF	6	\$180.00	0	\$0.00
TRB	0	\$0.00	0	\$0.00
<b>TOTALS</b>	<b>214</b>	<b>\$6,390.00</b>	<b>47</b>	<b>\$1,620.00</b>

**TABLE 6 Processing Fees received and reduced or waived**

PSO	Number received	Amount received	Number waived	Amount waived
AGDJ	33	\$414.70	29	\$116.20
CoD	0	\$0.00	0	\$0.00
CoP	0	\$0.00	0	\$0.00
DCM	0	\$0.00	0	\$0.00
DENR	0	\$0.00	0	\$0.00
DHCD	0	\$0.00	121	\$7,108.30
DIPL	5	\$1,666.95	9	\$962.73
DLA	0	\$0.00	0	\$0.00
DoE	4	\$525.02	0	\$0.00
DoH	19	\$2,869.05	55	\$2,791.98
DPIR	2	\$706.87	0	\$0.00
DTBI	1	\$284.90	3	\$569.80
DTC	0	\$0.00	1	\$46.67
DTF	0	\$0.00	3	\$225.00
LC	0	\$0.00	0	\$0.00
NTPFES	59	\$1,922.00	20	\$600.00
PWCNT	0	\$0.00	0	\$0.00
TF	4	\$120.00	0	\$0.00
TRB	0	\$0.00	1	\$16.00
<b>TOTALS</b>	<b>127</b>	<b>\$ 8,509.49</b>	<b>241</b>	<b>\$12,420.68</b>

**TABLE 7 Total fees received and reduced**

Total fees received	Total fees waived or reduced
\$1,044.70	\$236.20
\$300.00	\$60.00
\$150.00	\$210.00
\$120.00	\$0.00
\$210.00	\$210.00
\$120.00	\$7,138.30
\$2,206.95	\$992.73
\$30.00	\$0.00
\$795.02	\$30.00
\$3,829.05	\$3,481.98
\$886.87	\$0.00
\$434.90	\$599.80
\$60.00	\$46.67
\$60.00	\$285.00
\$60.00	\$0.00
\$4,292.00	\$600.00
\$0.00	\$150.00
\$300.00	\$0.00
\$0.00	\$16.00
<b>\$14,899.49</b>	<b>\$14,040.68</b>



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