

Freedom of Information, Privacy Protection & Public Interest Disclosures in the Northern Territory



Annual Report 2009-2010

COMMISSIONER
FOR **Public Interest
Disclosures**





30 September 2010

The Hon Delia Lawrie MLA
Minister for Justice and Attorney-General
Parliament House
DARWIN NT 0800

Dear Minister

Pursuant to section 98 of the *Information Act* and s 48 of the *Public Interest Disclosure Act*, please find attached the Annual Report on the operations of the Office of the Information Commissioner and the Commissioner for Public Interest Disclosures for the period 1 July 2009 to 30 June 2010.

Yours sincerely

Brenda Monaghan

Commissioner, Information and Public Interest Disclosures

TABLE OF CONTENTS

Message from the Commissioner	1
Overview	3
1 Introduction	3
1.1 Joint Office – location, structure and staffing	3
1.2 Office expenditure	4
1.3 Managing the joint Office	4
1.4 Achievements of the joint Office in 2009-10	5
2 Office of the Commissioner for Public Interest Disclosures	7
2.1 Overview of legislation	7
2.2 Legislative amendments	7
2.3 Functions of the Commissioner for Public Interest Disclosures	8
2.4 Performance Measures	9
2.4.1 Quantity – Public Interest Disclosures received	9
2.4.2 Timeliness – Public Interest Disclosures resolved or reported	10
2.4.3 Timeliness – reports to Minister under section 31 of the Act	10
2.4.4 Quantity – review of relocation applications	11
2.4.5 Quantity and quality – awareness and training	11
2.5 Reporting requirements under s48 of the Act	12
2.5.1 The number and kinds of public interest disclosures made	12
2.5.2 Public interest disclosures referred by the Speaker	14
2.5.3 Number and kinds of public interest disclosures investigated	14
2.5.4 Referral of Investigations to other bodies	15
2.5.5 Public interest disclosures not investigated	16
2.5.6 Number of investigations under section 31(1)(a) of the Act	17
2.5.7 Number of investigations under section 31(1)(b) of the Act	17
2.6 Other functions of this Office	17
2.6.1 Protecting and supporting disclosers	17
2.6.2 Guidelines	18
2.7 Future directions and challenges for 2010-11	19
3 The Office of the Information Commissioner	20
3.1 Overview of legislation	20
3.2 Legislative amendments	20
3.3 Functions of the Office of the Information Commissioner	21
3.4 Performance measures	21
3.4.1 Quantity – complaints and applications	21
3.4.2 Timeliness – resolving complaints within 12 months	22
3.4.3 Quantity – training and awareness	22
3.4.4 Quality – stakeholder satisfaction	22

3.5	Reporting requirements under s98 of the <i>Information Act</i>	23
3.5.1	The right to access information	23
3.5.2	Applications handled and finalised	23
3.5.3	Applications not accepted	24
3.5.4	Applications withdrawn	24
3.5.5	Amount of information released	24
3.5.6	Reasons for refusing to release information	26
3.5.7	Exemptions relied upon	26
3.5.8	Privacy exemption	26
3.5.9	Secrecy exemption	27
3.5.10	Ombudsman investigation exemption	27
3.5.11	Police complaints exemption	27
3.5.12	Application and processing fees	28
3.5.13	Correction of personal information	29
3.5.14	Review decisions	29
3.5.15	Exemption certificates	30
4	FOI complaints to the Information Commissioner	31
4.1	Handling FOI complaints	31
4.2	FOI complaints in 2009-10	31
4.3	FOI Prima facie decisions delivered in 2009-10	32
	Prima facie decision – unreasonable interference	32
	Prima facie decision – fees	33
	Prima facie decision – Cabinet exemption	33
	Prima facie decision – anonymity	33
	Prima facie decision – correction	34
5	Privacy protection	34
5.1	Privacy activity in 2009-10	34
5.2	Public sector organisations' responsibilities	35
5.3	Privacy complaints to the Commissioner	35
5.4	Handling privacy complaints	35
5.5	Privacy complaints in 2009-10	36
	Prima facie decision 1.	36
	Prima facie decision 2.	37
6	Other functions of the Information Commissioner	37
6.1	Promoting awareness about FOI and privacy.	37
6.2	General enquiries	38
6.3	Presentations	38
6.4	Privacy Awareness Week	39
6.5	The Show Circuit	40
6.6	Information Officers' Forum	40
6.7	Guidelines	40
6.8	Website	40
6.9	Staying abreast of developments in FOI and privacy issues	41
6.10	Asia Pacific Privacy Authorities Forum	41

6.11	The 33 rd APPA Forum – Darwin, June 2010	41
6.12	Participation in Authorities, Chapters and Committees	42
6.13	Providing policy assistance and advice	43
6.14	Policy assistance and advice provided in 2009-10	43
6.15	Records Management	43
6.16	Need to support Information Officers	44

7 Future Directions 44

List of Appendices

Appendix 1 – Statement of financial performance	47
Appendix 2 – <i>Information Act</i> guidelines	48
Appendix 3 – Exemption certificate	57
Appendix 4 – Changes to public sector organisations	59

Separate Attachment

Guidelines *Public Interest Disclosure Act* September 2010



Message from the Commissioner

I am pleased to present the first Annual Report on the work of the joint Office of the Information Commissioner and the Commissioner for Public Interest Disclosures. This has been a year of significant change following the commencement of the *Public Interest Disclosure Act* on 31 July 2009. Prior to that date, this Office dealt solely with matters relating to Freedom of Information and Privacy under the *Information Act*.

The main challenge for this Office has been the unanticipated level of interest in the new “whistleblower” legislation. This has placed a strain on our limited resources which in turn has led to unavoidable delays in dealing with some disclosures.

Be that as it may, the Office of the Commissioner for Public Interest Disclosures can be proud of the fact that we have in one year:

- established the Office;
- conducted a successful media campaign;
- trained over 1,000 persons through face to face sessions and online;
- accepted 78 disclosures and finalised 38 of those matters within 12 months;
- assisted in the necessary amendments to the legislation; and
- prepared Guidelines to assist all those involved in public interest disclosure investigations (attached separately to this report).

In this first Annual Report for the Office of Public Interest Disclosures, I have refrained from readily drawing conclusions from the data about future trends. To do so would be premature when many of our more detailed investigations are ongoing. Safe to say however that the disclosures received to date relate to a wide range of types of improper conduct in a variety of public bodies both regional and urban. It is also noteworthy that responsible Chief Executives have been uniformly helpful when faced with an enquiry of this Office. Whilst public bodies generally still have a long way to go in providing disclosers with the support they need, it is heartening to see that some agencies have already set up discloser support policies and systems and others are in the process of doing so. Our Office is always available to provide assistance to public bodies in providing better support to disclosers.

In the Office of the Information Commissioner (my other "hat"), considerable emphasis has been placed on dealing with a backlog of complaints. As a result of hard work by Acting Commissioner Robert Bradshaw (31 July 2009 – 29 January 2010), Deputy Commissioner Zoe Marcham and other staff, the Office:

- doubled the number of Prima Facie decisions made;
- increased six-fold the number of mediations held;
- published a new Guideline to explain how the Office will be handling complaints in the future;
- hosted a successful International Conference of Privacy Authorities attended by local, interstate and overseas delegates; and
- provided considerable assistance to government departments particularly to facilitate information-sharing.

Looking to the future, the combined Office has certain aims for the next financial year including:

- dealing with the backlog of investigations and attempting to resolve the majority of matters in a more timely manner;
- continuing to raise the profile of the Public Interest Disclosures Office to ensure people are aware of our role in maintaining integrity in public bodies;
- assisting public bodies to properly support disclosers (whistleblowers) and to facilitate the investigation process;
- increasing understanding within public sector organisations of practical steps they can and should adopt to protect private and confidential information; and
- raising public awareness of an individual's right to seek access to government information and have the privacy of their personal information protected.

Since my appointment in late February 2010, I have had commendable support and assistance from our Office staff namely Zoe Marcham, Caroline Norrington (until June 2010), Helmy Bakermans (.8), James O'Brien, Somsong Albert (.25) and Allan Borg (taking over from Caroline). I thank them all for their dedication and professionalism. Special thanks also to the Victorian Ombudsman and his Office for providing invaluable practical assistance and guidance to us throughout the year.



Brenda Monaghan
Commissioner, Information and Public Interest Disclosures

Overview

1 Introduction

The Office of the Information Commissioner and the Office of the Commissioner for Public Interest Disclosures are statutory offices established by the Northern Territory Parliament. The Commissioner is required to act independently, impartially and in the public interest in exercising the powers or performing the functions of the Offices.

The Office of the Information Commissioner was established in 2002 in preparedness for the commencement of the *Information Act* on 1 July 2003. The Office deals with all matters relating to freedom of information and privacy under that Act. This is its 7th Annual report.

On 31 July 2009, the *Public Interest Disclosure Act* came into force providing a new whistleblower investigation and protection service to the NT. This is the 1st Annual Report of that Office.

Over the past year, a number of staff members have played key roles in ensuring that this Office fulfilled its legislative functions- in particular Mr Robert Bradshaw (Acting Commissioner), Ms Zoe Marcham (Deputy Commissioner) and Ms Caroline Norrington (Chief Investigator) who were all closely involved in the establishment of the Office of the Commissioner for Public Interest Disclosures. In February 2010, Ms Brenda Monaghan, a qualified lawyer with over 20 years working in the Territory, was appointed the Commissioner, Information and Public Interest Disclosures. Ms Monaghan's most recent experience was as the Legal Member of the Northern Territory Licensing Commission and Executive Director Licensing Regulation & Alcohol Strategy, Department of Justice. Ms Monaghan is appointed for a five (5) year term.

1.1 Joint Office – location, structure and staffing

The joint Office is located on the 7th floor, 9-11 Cavenagh Street, Darwin, with a limited sharing of resources with the Office of the Anti-Discrimination Commissioner. The Office also contributes towards the cost of a shared Office Manager employed by the Anti-Discrimination Commission.

Currently, the Commissioner and a team of 5 part-time and full-time staff are jointly responsible for both areas.

However, during the reporting period, the Office comprised:

- 1 x ECO1 Acting Information Commissioner from 1 July 2009 to 31 July 2009 – Zoe Marcham.
- 1 x ECO3 Acting Commissioner, Information and Public Interest Disclosures from 31 July 2009 to 29 January 2010 – Robert Bradshaw.

- 1 x ECO2 Commissioner, Information and Public Interest Disclosures commenced February 2010 – Brenda Monaghan. **(Current)**
- 1 x ECO1 Deputy Commissioner, Information and Public Interest Disclosures – Zoe Marcham. **(Current)**
- 1 x ECO1 Acting Deputy Information Commissioner from 7 September to 2 October 2009 – Victoria Aitken.
- 1 x AO8 Complaints and Policy Officer from July to December 2009 – Barbara Pedersen.
- 1 x P3 Complaints and Policy Officer from 1 July to 31 July 2009 – Sarah Wilkie.
- 1 x AO8 Education and Policy Officer from July 2009 to December 2009 – Caroline Norrington.
- 1 x EO1/AO8 Chief Investigation Officer from January 2010 to June 2010 – Caroline Norrington.
- 1 x AO8 Acting Chief Investigation Officer commenced April 2010 – Allan Borg. **(Current)**
- 1 x AO3 Investigation Support Officer commenced on 9 November 2009 – James O'Brien. **(Current)**
- 0.25 x AO6 Office Manager (shared with the Office of the Anti-Discrimination Commissioner) – Somsong Albert. **(Current)**
- 0.8 x AO6 Administration and Policy Support – Helmy Bakermans. **(Current)**

1.2 Office expenditure

Total direct expenditure by the joint Office (Information and Public Interest Disclosures) in 2009-10 on employee expenses and the purchase of goods and services was \$165,000. The Office received specific one off funding of \$125,000 to assist with the establishment and communications costs for the new Public Interest Disclosure functions.

In addition, for the purposes of financial statements, notional amounts have been attributed to expenses for services provided by the Department of Justice and the Department of Business and Employment.

A Statement of Financial Performance for 2008-09 is included at Appendix 1 to this Report. The Office is also included in detailed financial statements that appear in the Annual Report of the Department of Justice.

1.3 Managing the joint Office

The Commissioner, Information and Public Interest Disclosures is an independent office in its decision-making functions under the relevant legislation but the Office is supported by the Department of Justice for financial and personnel matters and is part of the Court Support and Independent Offices Division.

The Office is required to comply with numerous public sector reporting requirements throughout the year. These include regular updates to the Departmental and Office Corporate and Business Plans, Annual Reports, Risk Assessment Plans and Performance Measures Reporting.

1.4 Achievements of the joint Office in 2009-10

In 2009-10, the Office of the Commissioner for Public Interest Disclosures

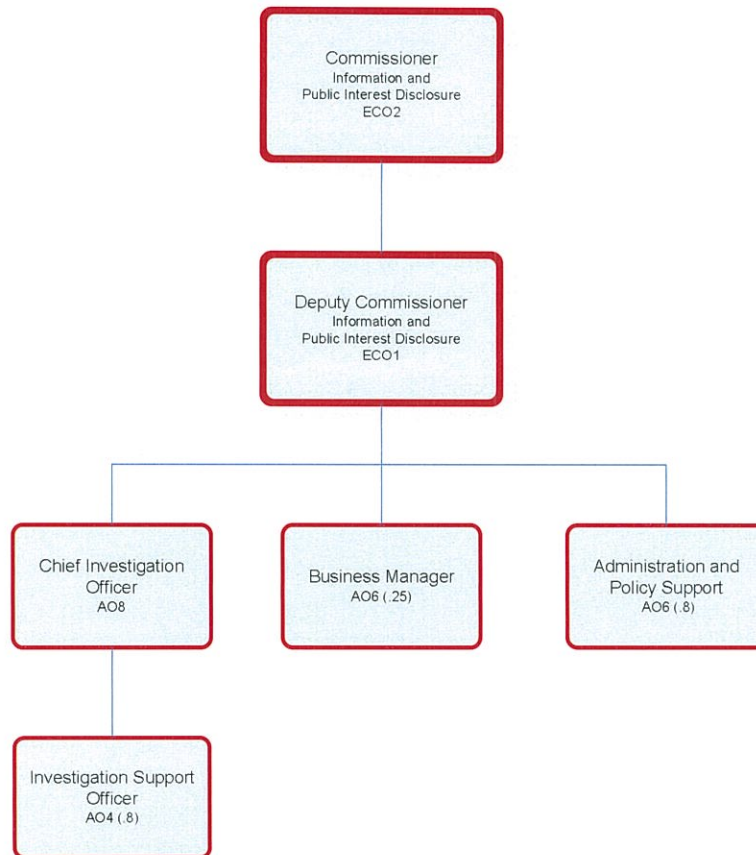
- established a secure Office, sharing facilities and personnel with the Office of the Information Commissioner;
- prepared and implemented all necessary policies and procedures, forms and protocols to enable public interest disclosure investigations to be conducted appropriately;
- conducted a successful media campaign to alert public servants and the public generally to the existence and function of the new Office;
- established a user-friendly website (www.blowthewhistle.nt.gov.au) with information and training specifically designed for various interest groups (eg disclosers, public bodies, public officers)
- conducted 24 individually tailored educational presentations to 409 participants and trained over 617 persons online;
- accepted 78 disclosures and finalised 38 of those matters within 12 months;
- assisted in the necessary amendments to the *Public Interest Disclosure Act* to enable Chief Executives to delegate their functions, to cater for sudden and extraordinary emergencies and to ensure that investigations by this Office are conducted as confidentially as is possible; and
- most recently, prepared Guidelines for publication to assist all involved in public interest disclosures and investigations.

The Office of the Information Commissioner assisted where possible with the setting up of the new whistleblowers office and continued “business as usual” with respect to promoting an understanding and acceptance of the *Information Act*. The Office also:

- organised a successful international forum for the Australia Pacific Privacy Authorities (“APPA”) in Darwin with interstate and overseas delegates;
- provided input on government policy proposals, cabinet submissions and draft legislation throughout the year;
- issued 17 prima facie decisions to progress FOI and privacy complaints;
- provided daily support and assistance to government organisations on a range of matters relating to FOI and privacy;
- provided 478 hours of policy advice to government organisations in relation to privacy issues;
- made a timely response to some 402 queries about FOI and privacy; and
- delivered or facilitated individually-tailored educational presentations for some 304 participants.

Office of Commissioner

Information and Public Interest Disclosure



Back row – from left: Allan Borg, Zoe Marcham, James O'Brien
Front row – from left: Caroline Norrington, Brenda Monaghan, Helmy Bakermans
(Somsong Albert – absent)

2 Office of the Commissioner for Public Interest Disclosures

2.1 Overview of legislation

The main objectives of the *Public Interest Disclosure Act* (the Act) are to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies and to establish a system for these matters to be investigated. The Act provides both protection to a discloser (often referred to as a 'whistleblower') who makes a disclosure, and remedies to protect them if reprisal action is taken against them.

The Commissioner for Public Interest Disclosures is an independent officer established to investigate improper conduct in Northern Territory public bodies including government departments, public hospitals, universities, local councils and many other organisations funded by the Northern Territory Government. Improper conduct can be described as 'very serious conduct' and includes matters such as seeking or accepting bribes, deception and stealing. People can also report behaviour that causes a substantial risk to public health and safety or to the environment.

The Commissioner decides whether each disclosure should be investigated and by whom. The Commissioner cannot investigate matters that are primarily personal or employment grievances or disagreements over policies that have been properly adopted. The Commissioner can also choose not to investigate a matter that is trivial, has already been investigated or which contains misleading information. Some investigations can be referred to the relevant public body for investigation.

When investigating disclosures, the Commissioner has significant powers to obtain information and to question people. It is an offence to fail to provide information or to answer questions when directed. Providing misleading information and omitting relevant information is also an offence. The Commissioner can also enter premises of public bodies and seize information.

Investigations are conducted in private and, where possible and appropriate, the identity of the discloser and others interviewed will remain confidential. Investigations are also conducted in accordance with the principles of natural justice.



This means that where the Commissioner is considering making an adverse comment against a person or body, they are given a chance to comment on the allegations, and any response is included in the investigation report. At the conclusion of the investigation, the Commissioner issues findings and recommendations about the improper conduct in a report to the public body. If the report contains recommendations, then the public body will be given time to implement them. If they fail to do so, the Commissioner may issue a public report containing details of the improper conduct and the public body's failure to deal with it. This report is tabled in Parliament.

2.2 Legislative amendments

During the first year of operation of the Act, it became clear that our investigations would be assisted by further amendments to the Act. The Office

worked with the Department of Justice to identify the areas in need of clarification and as a result legislative amendments were passed in the May 2010 sittings and were assented to on 30 June 2010, taking effect on 21 July 2010. These amendments included the following:

- **The addition of s53A** enabling a person to disclose confidential information about a disclosure in situations of sudden or extraordinary emergency. The amendment requires the person to reasonably believe that such an emergency exists, that disclosing the information is the only reasonable response and that the risk posed by the emergency significantly outweighs the possible harm caused to the discloser by divulging the confidential information;
- **The inclusion of s53B** which enables the Commissioner to direct a person in writing not to disclose confidential or identifying information about an investigation. This amendment assists the Commissioner in ensuring that an investigation remains private. Contravention of this direction is an offence attracting significant penalties;
- **The inclusion of a clear delegation power (s54A)** for responsible Chief Executives to enable them to delegate in writing any of their powers under the Act to a specific person or persons. This amendment greatly assists Chief Executives in executing their responsibilities under the Act.

2.3 Functions of the Commissioner for Public Interest Disclosures

The Commissioner has a central role in handling disclosures of improper conduct made under the Act. The role of the Commissioner involves:

- Assessing disclosures received to decide whether or not they are public interest disclosures and whether they should be investigated.
- Providing support and legislative protections to disclosers.
- Conducting investigations of public interest disclosures.
- Referring certain investigations to the Ombudsman, the Police Commissioner, the Auditor-General, NT WorkSafe or the Commissioner for Public Employment and considering any objections to referral.
- Reporting to public bodies and to the discloser regarding the outcome of an investigation and any recommendations for change.
- Reporting to the relevant minister for tabling in the Legislative Assembly where public bodies fail to implement recommendations made by the Commissioner at the conclusion of an investigation.
- Preparing and publishing guidelines to assist individuals and public bodies in interpreting and complying with the Act.
- Collating and publishing statistics about disclosures handled by the Commissioner.
- Assisting with training of public bodies about their obligations under the Act particularly with respect to the needs of a discloser and public education generally.

2.4 Performance Measures

All disclosures received by this Office are subjected to a rigorous initial assessment/preliminary investigation process. At the completion of this process, a decision is made for each disclosure as to the proposed course of action to be adopted. For example, a matter may be rejected outright as not being a disclosure, a request for more information may be made of the discloser, a matter may be referred to another body or the matter may progress to a full investigation.

For the purpose of performance reporting, all allegations containing 'public interest information' were classified as 'public interest disclosures'. Public interest information is defined in the Act as:

- Information that, if true, would tend to show a public officer or public body has engaged, is engaging, or intends to engage, in improper conduct.

The Government in **Budget Paper 3** (BP3) set Performance Measures for the Office which contained measures of quantity, quality and timeliness for 2009/10. The summary below reports on the reason for a revision of earlier estimates and the actual performance of this Office over the reporting period.

2.4.1 Quantity – Public Interest Disclosures received

Revised performance measure

It is always difficult to judge the likely level of interest there will be in a new Office such as this. At the time of establishment, the number of public interest disclosures this Office was likely to receive annually was estimated at 10. Soon after the Act commenced, it became clear that the number of disclosures would far exceed 10. In March 2010, the BP3 estimate for 2009/10 and 2010/11 was revised from 10 to 100.

Performance Measures		Original 09-10 Estimate	Revised 09-10 Estimate	Revised 10-11 Estimate
Quantity	Public interest disclosures	10	100	100

Performance outcome for 2009/10

The number of disclosures received during the reporting period was 78.

Quantity	September 2009 1st Quarter	December 2009 2nd Qtr	March 2010 3rd Qtr	June 2010 4th Qtr	As at 30/06/10
Public Interest Disclosures	19	40	12	7	78

During the first 2 quarters of the reporting period, considerable effort and resources were put into public education and awareness regarding the functions of this Office. It appears reasonable to conclude that both the awareness campaign and public interest in the new 'whistleblower' functions resulted in the

large numbers of disclosures received. It remains to be seen whether the estimate of 100 for 2010/11 is realistic but the current reporting rate would suggest a lower figure is more likely.

2.4.2 Timeliness – Public Interest Disclosures resolved or reported

Revision of performance measure

The initial performance measure regarding ‘timeliness’ set for this Office required that 90% of investigation reports be presented to the responsible authority within a six-month time frame. When faced with a far greater number of disclosures than first anticipated, this estimate proved unrealistic. Further, the performance measure did not take into account the large number of matters being ‘resolved’ by processes other than a full investigation. In March 2010, a revised estimate was introduced, requiring 15% of disclosures to be resolved or investigation reports to be presented to the responsible authority within six months for the 2009/10 reporting period. A similar revised measure was also introduced for the 2010/11 reporting period – save that the percentage required is 30%, not 15%.

Performance outcome for 2009/10

By the end of the reporting period, 78 disclosures had been received by this Office. Of these, 58 disclosures were subject to the six month performance measure. (i.e. 58 of the 78 disclosures were received prior to 31 December 2009.) The Office resolved 27 of the 58 disclosures (including the referral of six) within six months of first contact with the discloser. This means that 57% of the files received were dealt with within a six month timeframe. Whilst it is fair to say that the majority of those completed files were the less complex matters, the result achieved suggests that the 2010/11 performance measure of 30% may be too conservative and may require revision.

Performance Measures		09-10 Estimate	09-10 Actual	10-11 Estimate
<i>Timeliness</i>	Disclosures resolved or investigation reports presented to the responsible authority within six months	15%	57%	30%

2.4.3 Timeliness – reports to Minister under section 31 of the Act

The Commissioner may report to the Minister on an investigation if it appears that insufficient steps have been taken by the public body to give effect to the Commissioner’s recommendations within a reasonable time. The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving it.

There have been no public reports made to the Minister during the reporting period.

Performance Measures		09-10 Estimate	09-10 Actual	10-11 Estimate
Timeliness	Reports presented to Minister within two months after completion of an investigation	100%	Nil	100%

2.4.4 Quantity – review of relocation applications

A public officer (whistleblower) may make a request to their Chief Executive for relocation within the same or another public body because of an act (or an apprehended act) of reprisal against the officer. If the request is refused, the Commissioner for Public Employment has the power to review the decision where the person is a public service employee. In other cases, the Commissioner for Public Interest Disclosures has the review power and can make recommendations to the Chief Executive and ultimately report to the responsible Minister if the response received from the Chief Executive is considered insufficient.

In the reporting period, no applications for review were received by the Commissioner for Public Interest Disclosures.

2.4.5 Quantity and quality – awareness and training

Important objectives during this first year were the education of disclosers, public officers and public bodies regarding their rights and obligations under the Act and efforts to increase community awareness of the important functions of this Office.

These objectives were achieved through the following:

- Public education and training strategies involving formal training tailored to the needs of each audience. The Office of the Commissioner for Public Interest Disclosures conducted 24 face-to-face training sessions in 2009-2010 in Darwin, Katherine and Alice Springs, with a total 409 participants. The 90% participation satisfaction rate (below) relates to this face-to-face training.
- A targeted media campaign during 2009 consisting of newspaper advertisements, media interviews, radio advertising (in both English and Indigenous languages), stalls at exhibitions, and brochures promoting the new Office and its website under the banner 'blowthewhistle'.
- Creation of an informative website at www.blowthewhistle.nt.gov.au including user friendly training modules for public officers and disclosers. These interactive training modules enable disclosers, public servants, and members of the public to increase their knowledge of the Act and the functions of this Office. 617 training modules were successfully completed on the website over the reporting period.
- Informal advice provided by this Office daily via freecall 1800 250 918.

Feedback from participants in the tailored face-to-face sessions was very positive. On-line training through the website has also been very well received.

It will be an important part of our work over the next year to continue to raise awareness through similar targeted strategies.

Performance Measures		09-10 Estimate	09-10 Actual	10-11 Estimate
Quantity	Awareness and training Presentations	26	24	10
	Number of participants	810	1026	100
Quality	Participant satisfaction	90%	90%	90%

A reduction in the estimated number of awareness and training presentations to be conducted in 2010-11 is based on the assumption that fewer face to face presentations will be necessary in the second year of operation as people will be encouraged to do the on-line training provided.

2.5 Reporting requirements under s48 of the Act

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

2.5.1 The number and kinds of public interest disclosures made

For the purpose of performance reporting, all allegations containing 'public interest information' were classified as 'public interest disclosures'. Public interest information is defined in the Act as:

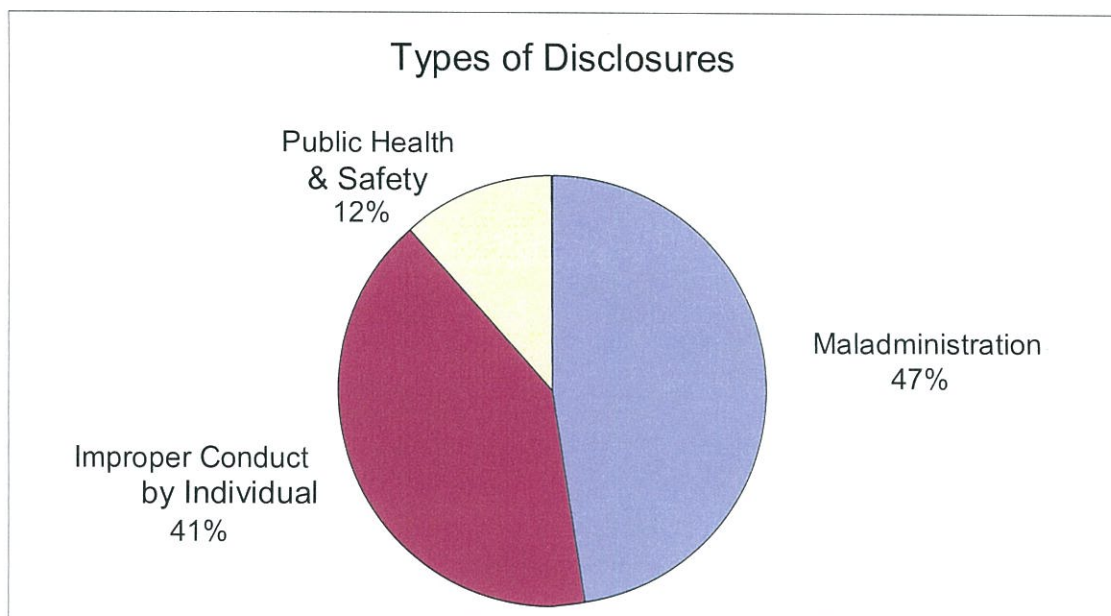
- Information that, if true, would tend to show a public officer or public body has engaged, is engaging, or intends to engage, in improper conduct.

During 2009-10, there were 78 Public Interest Disclosures made to this Office. In other words, 78 individuals approached this Office with one or more disclosures of improper conduct by a public officer or public body. It is interesting to note that only one of those matters was referred to the Commissioner by a responsible Chief Executive (who is required to refer any public interest disclosure made to them to the Commissioner within 14 days.)

The disclosures made related to a wide variety of allegations of improper conduct. Some disclosures involved several different alleged acts of improper conduct and on occasion multiple persons were allegedly involved. Most disclosures however were allegations about one specific act of improper conduct. It is further noted that less than 10% of the disclosures related to incidents occurring more than 3 years ago.

Of the disclosures received during the reporting period the principal allegations of improper conduct were as follows;

- 47% - a disclosure of maladministration,
- 41% - a disclosure of improper conduct by individual, and
- 12% - a disclosure of risk to public health and safety.



Maladministration allegations received by this Office involved various acts of improper conduct that, while not appearing to directly benefit the persons responsible, included;

- failure to enforce regulations as required by legislation;
- failure to prevent inappropriate bias;
- breach of public trust;
- failure to observe the principles of natural justice;
- lack of transparency; and
- failure to prevent improper conduct.

Individuals were alleged to have been involved in a variety of acts of improper conduct for apparent personal benefit, including;

- criminal fraud;
- misappropriation of public resources;
- inappropriate bias;
- dishonesty;
- misuse of confidential information; and
- seeking or accepting a bribe.

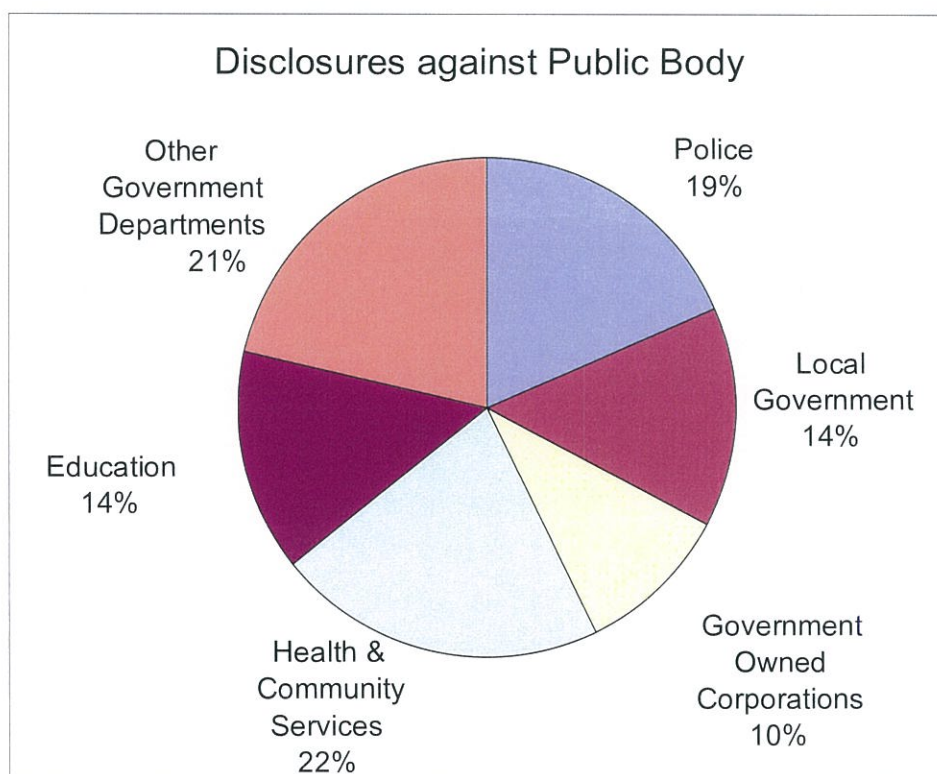
Allegations of improper conduct that created a substantial risk to public health and safety included:

- failure to enforce regulations;
- substantial breaches of health and safety standards;
- failure to report incidents;
- failure to adequately investigate breaches.

Allegations of improper conduct were received from both within the public service and the general public. Significantly more allegations were received

about public bodies/officers in the Darwin region. We attribute this to the higher population, the greater infrastructure, the advertising and training campaign, and the fact that the head offices of most Government Departments are in Darwin. With regard to the rural areas, more complaints were directed towards public bodies/officers in the Top End rather than the Centre.

The diagram below provides a breakdown of the public bodies about which Public Interest Disclosures were made.



2.5.2 Public interest disclosures referred by the Speaker

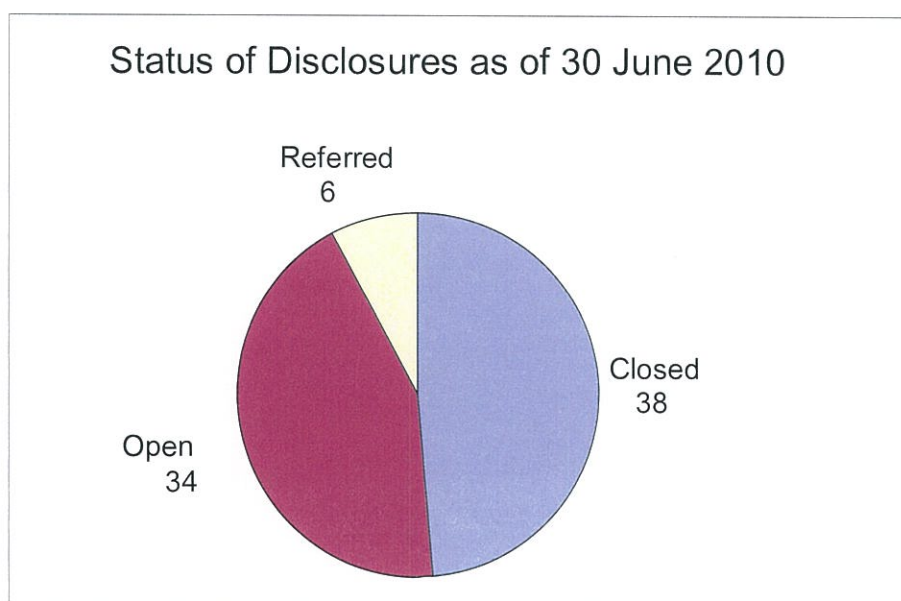
In circumstances where improper conduct relates to a politician who is a member of the Northern Territory Legislative Assembly (an MLA), then the disclosure must be made to the Speaker of the Legislative Assembly who may refer the matter to the Commissioner for investigation under section 12(1) of the Act. In the 2009-2010 reporting period, the Commissioner received no public interest disclosures from the Speaker of the Legislative Assembly.

2.5.3 Number and kinds of public interest disclosures investigated

Of the 78 disclosures received by the Office during the reporting period:

- 22 underwent a brief assessment and were rejected by the Commissioner on the grounds that they were not public interest disclosures attracting the protections of the Act;
- 15 disclosures underwent a more prolonged assessment/investigation before being rejected by the Commissioner;
- One disclosure was accepted as a public interest disclosure attracting the protections of the Act and was investigated and completed;

- Six were assessed and referred to another body for investigation; and
- Of the remaining 34 disclosures current as at 30 June 2010:
 - 12 were awaiting or undergoing initial assessment;
 - 10 were undergoing more detailed assessment/investigation before a decision being made regarding their status; and
 - 12 were accepted as public interest disclosures and were still undergoing investigation.



The Office has established **Categories of Investigation** as follows:

- Level 3 Investigation – estimated to occupy an investigator for a period exceeding 2 months.
- Level 2 Investigation – estimated to occupy an investigator for a period exceeding 1 month, but not exceeding 2 months.
- Level 1 Investigation – estimated to occupy an investigator for a period not exceeding 1 month.

The current investigations have been classified using the Office criteria and are shown in the following table.

Level 3 Investigations	Level 2 Investigations	Level 1 Investigations
4	3	5

2.5.4 Referral of Investigations to other bodies

Section 22 of the Act allows the Commissioner, when it is deemed appropriate to do so, to refer public interest disclosures to the Ombudsman, the Auditor-General, the Commissioner for Public Employment, the Commissioner of Police, or NT WorkSafe. The referral process is only undertaken after the discloser has been advised of the referral and has had his or her comments considered by the Commissioner. Once referred, the referral body exercises its

own powers of investigation and the Act no longer applies to the referred investigation. The discloser however, retains his or her protections under the Act.

Throughout the reporting period, the Commissioner formally referred the following:

- three (3) matters to the Auditor-General;
- two (2) matters to the Commissioner for Public Employment; and
- one (1) matter to the Ombudsman.

Example 1

The Commissioner received a disclosure that a public officer was demonstrating inappropriate bias in the employment of personnel in that public body. The allegation was that a manager was employing colleagues at a higher pay grade than was required for the duties involved. The Commissioner assessed the matter to be a public interest disclosure on the basis that this conduct, if proved, would constitute a substantial misuse of public resources and dishonesty.

After discussion, the Commissioner referred the matter to the Commissioner for Public Employment for investigation.

Example 2

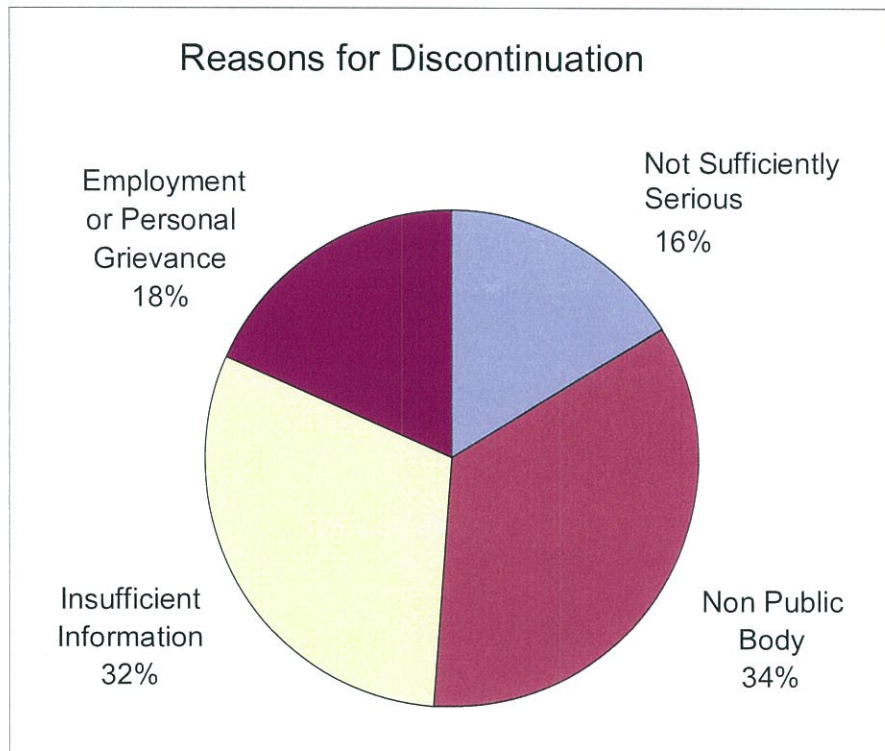
The Commissioner received a disclosure about the theft of public assets from a public body and an allegation that a public officer was complicit in the matter.

After discussion, the Commissioner referred the matter to the Auditor-General for investigation. The discloser retained the protections under the Act.

2.5.5 Public interest disclosures not investigated

Following assessment, the Commissioner deemed that 37 of the 78 disclosures received were not to be investigated further. This occurred for a variety of reasons as follows:

- 16% were determined as not sufficiently serious;
- 34% related to organisations or people outside of the Commissioner's jurisdiction as the allegations were not about improper conduct of a Northern Territory public body/officer;
- 32% lacked sufficient information for the disclosure to be adequately assessed; and
- 18% were substantially personal or employment-related grievances.



2.5.6 Number of investigations under section 31(1)(a) of the Act

After completing an investigation, the Commissioner must report the findings to each responsible authority for the public body or public officer to whom the investigation relates; and may (except in the case of a referred MLA investigation) make recommendations for action to be taken as a result of the findings. Only one such report had been made in the reporting period however this number is expected to rise dramatically in the 2010/11 reporting period as more investigations are completed.

2.5.7 Number of investigations under section 31(1)(b) of the Act

If, after considering any information provided by a responsible authority, it appears to the Commissioner that insufficient steps have been taken to give effect to the recommendations for action made by the Commissioner within a reasonable time, the Commissioner may report to the Minister on the investigation, the recommendations and the response to the recommendations. The Minister must table a copy of the report in the Legislative Assembly within six sitting days after receiving it. There have been no public reports made to the Minister during the reporting period.

2.6 Other functions of this Office

2.6.1 Protecting and supporting disclosers

Although disclosers vary in their reasons for reporting their concerns about improper conduct in the workplace, two things are clear. The vast majority who contact this Office are very aware of the importance of the step they are taking and many find the ordeal of being a 'whistleblower' extremely stressful.

In order to create an environment supportive of whistleblowing and whistleblowers, disclosers need:

- a confidence that the organisation expects such concerns to be reported and that it is their ethical duty to do so;
- a belief that they are serving some good purpose because action will be taken if their concerns are well founded;
- knowledge that they will be protected and that they will not become a 'victim' through the process; and
- access to information about how best to report their concerns.

In order to protect and support disclosers, this Office:

- treats disclosers with respect, takes the time to listen to their concerns, and provides them with relevant information about protection and support available to them;
- tries to ensure that the discloser remains anonymous if possible and makes sure they are aware of their legislative protections if anonymity is not an option.
- encourages disclosers to seek support and assistance from other bodies (such as counselling from EASA and similar services, medical and legal advice) as required; and
- provides advice and guidance to public bodies to assist them in properly supporting the discloser.

2.6.2 Guidelines

Section 47 of the Act provides that the Commissioner must prepare and publish guidelines about:

- dealing with public interest disclosures, including investigating the disclosures; and
- protecting a discloser from an act of reprisal, including the steps to be taken within a public body for that purpose.



The newly developed Commissioner's Guidelines are published as a separate document with this Annual Report. They are also published online at www.blowthewhistle.nt.gov.au

The Guidelines will be updated from time to time as required.

2.7 Future directions and challenges for 2010-11

The first year of any new Office is one which can only be described as challenging, and the experience of this Office has been no exception. Looking forward, this Office is focussed on the following:

- dealing with the backlog of investigations and attempting to resolve the majority of matters in a more timely manner without compromising the integrity of the process;
- continuing to raise the profile of the Public Interest Disclosures Office to ensure people are aware of our role in maintaining integrity in public bodies;
- assisting public bodies to properly support disclosers and to facilitate the investigation process;
- establishing Memoranda of Understanding with Offices such as the Ombudsman and Police.

3 The Office of the Information Commissioner

3.1 Overview of legislation

The Information Commissioner is an independent officer appointed to perform statutory roles under the FOI, privacy protection and records management provisions of the *Information Act* (the Act). The main objects of the Act relate to aspects of government information management:

- Freedom of Information (FOI) to provide the Territory community with access to government information, including personal information;
- Privacy protection to protect the privacy of personal information held by public sector organisations;
- The right to request correction of personal information; and
- Records management to promote efficient and accountable government through appropriate records and archives management by public sector organisations.

3.2 Legislative amendments

The Department of Justice is currently conducting a review of the Information Act. Preliminary comments were provided by this Office at an earlier stage. The Office looks forward to working closely with the Department of Justice on these important reforms.

During the reporting period, a number of amendments to the *Information Act* were made. These include insertion of sections 49A, 49B and 49C to exempt from disclosure:

- information obtained or created because of an investigation undertaken by the Health and Community Services Complaints Commissioner, the Auditor-General, a Board or Commissioner appointed under the *Inquiries Act* or Commissioner under the *Local Government Act*;
- information contained in a public interest disclosure or obtained or created during an investigation under the *Public Interest Disclosure Act*; and
- information contained in a complaint or obtained or created during a preliminary inquiry, conciliation or mediation, police complaints resolution process or an investigation under the *Ombudsman Act*.

Major changes were also made to Part 9 of the Act governing records and archives management, to define and separate the records functions from archives functions and set out responsibilities for development of retention and disposal schedules, records standards, and archives standards.

The Information Regulations were amended so that certain public sector organisations (other than a Government Business Division, a local authority or a higher education institution under the *Higher Education Act*) may not charge a member of the Legislative Assembly a fee for access to government information in a report brought into existence by a public sector employee or a consultant

where the report describes “an event or situation arising from an investigation, inquiry or observation”.

3.3 Functions of the Office of the Information Commissioner

The functions of the Office of the Information Commissioner are:

- **handling complaints** – responding to formal complaints about FOI decisions and breaches of privacy and resolving complaints by issuing prima facie decision, conducting mediations and hearings;
- **providing policy assistance** – helping government organisations to recognise and deal with FOI and privacy issues that need to be addressed as part of policy and legislative development and review;
- **promoting awareness** – increasing knowledge, understanding and acceptance about FOI and privacy protection in the community and in the public sector;
- **handling general enquiries** – helping people to exercise their rights, and advising government organisations on how to meet their obligations under the *Information Act*; and
- **considering applications** – deciding applications for grants of authorisation and considering draft codes of conduct.



3.4 Performance measures

The Government, in Budget Paper 3 for 2009-10, amended the Office’s performance measures to more accurately reflect the anticipated work of the Office. They contain measures of quantity, quality and timeliness.

3.4.1 Quantity – complaints and applications

Performance Measures		09-10 Estimate	09-10 Actual	10-11 Estimate
Quantity	Complaints & applications dealt with during the reporting period			
	-FOI	25	31	25
	-Privacy	10	10	10

Complaints in FOI received this year were 25% higher than expected. Full details of these complaints are reported in Part 4 and Part 6 respectively.

3.4.2 Timeliness – resolving complaints within 12 months

Performance Measures		09-10 Estimate	09-10 Actual	10-11 Estimate
Timeliness	Complaints finalised within 12 months			
	-FOI	50%	22%	50%
	-Privacy	70%	67%	70%

The new measure for timeliness records the number of complaints finalised within 12 months. The Office finalised 67% of the privacy complaints within that time frame but only 22% of the FOI complaints; a figure that requires some explanation.

The reasons for delays in finalising FOI complaints include:

- Extra time taken to reach agreement with the consent of both parties;
- Organisations being unable to provide the information that the Office has requested;
- Complaints being on hold while awaiting the result of a court case; or
- Complaints involving a very large number of documents – some in excess of a thousand documents which require editing before being released.

Whilst many reasons for delay are justifiable, the management of complaints would be improved if the Commissioner had better case management options under the Act, including the option of penalising blatant breaches of directions.

3.4.3 Quantity – training and awareness

Performance Measures		09-10 Estimate	09-10 Actual	10-11 Estimate
Quantity	Awareness and training presentations	20	16	20
	Number of participants	200	304	200

The statistics include the training conducted by international FOI expert Megan Carter, of Information Consultants Pty Ltd, as this Office coordinates and supports her FOI training sessions.

3.4.4 Quality – stakeholder satisfaction

Performance Measures		09-10 Estimate	09-10 Actual	10-11 Estimate
Quality	Stakeholder satisfaction with performance	80%	89%	80%

Training participants and public sector organisations provide feedback following training sessions, policy advice and general enquiry services. The figures in this table are based on that feedback.

3.5 Reporting requirements under s98 of the *Information Act*

Section 98 of the Act requires that the annual report set out details of FOI activity for each public sector organisation. This includes applications received, handled, accepted, transferred or withdrawn. Statistics relating to FOI activity are reported in Appendix 2 and commented on below.

When comparing statistics with those collected last year, it is important to remember that in early December 2009, the Government realigned certain government functions and also created some new agencies. A summary of the new arrangements is at Appendix 4.

3.5.1 The right to access information

The *Information Act* gives members of the public the right to access information held by Northern Territory public sector organisations. People must be given access to records containing the information they apply for unless disclosure would be against the public interest. FOI also gives people the right to apply to have their personal information corrected if it is inaccurate, incomplete or out of date.

Any person wishing to make an FOI application can obtain an application form from the organisation that holds the information or their website. This Office's website <http://www.foi.gov.au> holds information about how to make an application and where to send it. A form is also available by phone, email or from this site: <http://www.nt.gov.au/justice/infocomm/foi/application.htm>.

Before an organisation can accept an application, it has to be satisfied as to the identity of the applicant. Within 30 days of acceptance, the organisation is required to make a decision whether or not to provide access. They may provide access in full, in part or not at all. Access can only be refused if it is not in the public interest to release the information and the organisation must provide its reasons for non-disclosure.

3.5.2 Applications handled and finalised

Public sector organisations handled a total of 483 FOI applications during the year, a slight increase over the previous 12 months. It is interesting to note that there has been a steady increase in the number of applications handled by several agencies, such as the Department of Health and Families which handled 20 applications in 2007-08, 47 application in 2008-09 and 76 applications this year; the Department of Justice where the number increased from 28 in 2007-08 and 39 in 2008-09 to 53 applications this year; and the Department of Housing, Local Government and Regional Services which saw an increase from 24 last year to 48 applications handled this year.

The Northern Territory Police, Fire and Emergency Services (“the Police”) continue to handle far more applications than any other organisation although the total number of applications has reduced this year. The Police have advised that they now process many requests for information under their administrative access schemes, rather than people having to make a request under the *Information Act*.

The number of applications finalised across NT public sector organisations increased from 359 last year to 399 this year. See Appendix 2 for full statistical information.

3.5.3 Applications not accepted

The number of applications not accepted by public sector organisations has remained constant with 23 applications not being accepted last year in comparison with 24 this year. The reasons for non-acceptance are numerous and may include:

- an applicant who failed to provide the \$30 application fee;
- an applicant who failed to provide adequate documentation to enable the organisation to be satisfied as to the identity of the applicant;
- the information was outside the scope of the Act; or
- the application was for government information created before 1 July 1993.

3.5.4 Applications withdrawn

There has been a steady decrease in the number of applications that were withdrawn by the applicant at some stage of the process during this year: it has dropped from 45 in 2007-08, to 37 last year and this year there were only 21 applications withdrawn. It is hard to explain the decrease but it may result from people having a greater understanding of the system and what it can and cannot achieve. Reasons for an application being withdrawn may include a person deciding that the estimated processing fee sought by the organisation holding the information is too high or they may simply lose interest.

3.5.5 Amount of information released

Table 2 (in Appendix 2) shows whether the information was released in full, released in part or not at all as well as the number of pages that fall into those categories.

The number of applications granted in full by organisations without claiming any exemptions has risen from 97 in 2007-08, to 151 last year to 160 this year. This is an encouraging statistic particularly when account is taken of the fact that the greatest increase has been in the amount of information sought by some applicants.

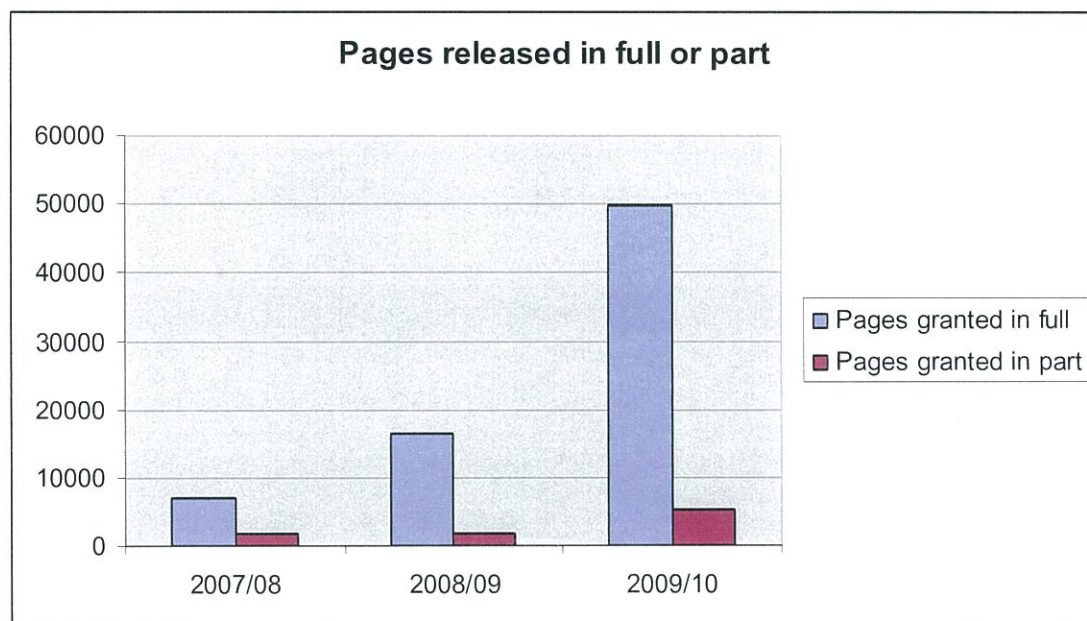
The number of pages released in full increased dramatically, from 16,265 pages last year to 49,668 pages released in full this year, which suggests that

proportionately more information is being released to the public. These are encouraging figures.

The *Information Act* contains the exemptions that may be invoked on the occasions when there are good reasons for refusing access to certain information, either in the public interest or on operational grounds. The number of pages edited prior to release this year was 5,410 which is almost three times the number of edited pages last year.

However, the greatest change has been in the number of pages that were refused in full: 339,816 pages were refused in full last year but this number has dropped to 5,854 this year.

The Department of Health and Families in 2008-09 refused access in full to 338,207 pages and granted access in full to 1,979 pages whereas this year, they only refused access in full to 1,662 pages and granted access in full to 29,175 pages. Another 2,855 pages were released in part.



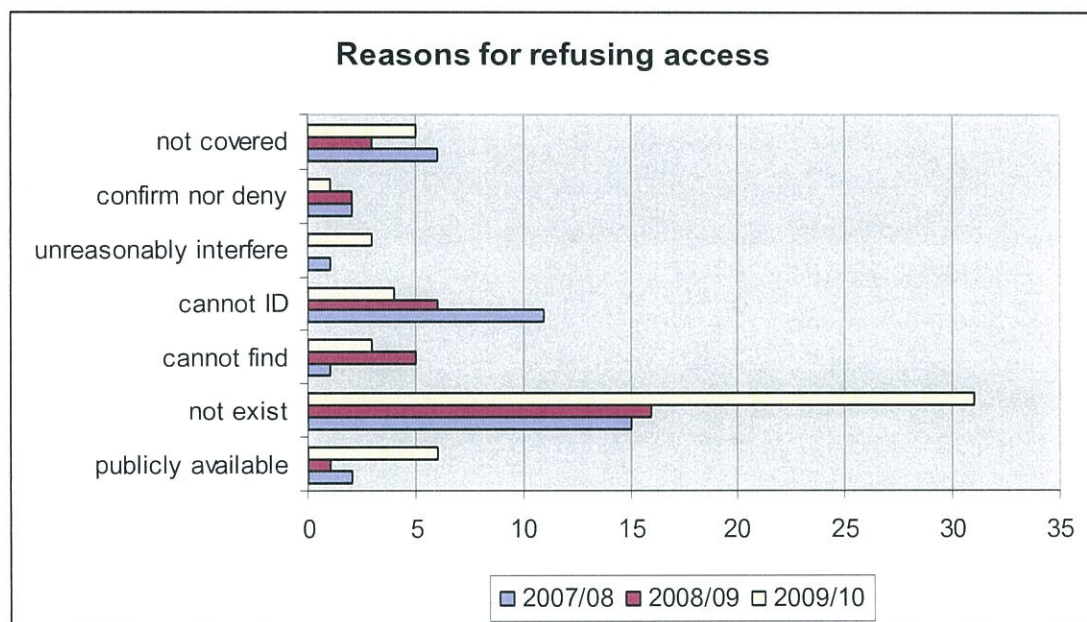
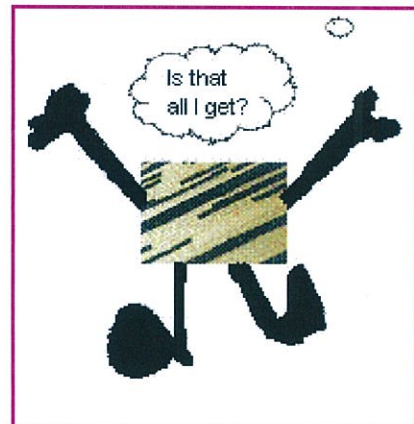
The Office of the Ombudsman received only two applications and released all information in full: a total of 148 pages. The Auditor-General received one application and released all the information without refusing access to any documents. Similarly, the Department of Business and Employment, the Northern Territory Electoral Commission, the Department of the Legislative Assembly and the Charles Darwin University refused access to very few documents.

It appears that Government organisations are increasingly making more information available to members of the public. It is certainly noted by this Office that the experienced Information Officers retained in some organisations are highly skilled in processing and reviewing the FOI applications made to their organisation.

3.5.6 Reasons for refusing to release information

Table 3 (in Appendix 2) shows the reasons the organisations used for refusing to release information.

As in previous years, the most common reason for refusing access was because the information was exempt. A total of 197 applications contained information that was deemed to be exempt. There were however other reasons for refusing access, as set out in the graph below



3.5.7 Exemptions relied upon

Table 4 (in Appendix 2) shows the number of pages that public sector organisations released in part and the exemption relied upon. Even if only a small part of the page was edited, it is counted as a page released in part. Similarly, if one or more exemption is relied on in one page, then each exemption is counted. This means that the number of exemptions listed in the table may not match the number of pages released.

3.5.8 Privacy exemption

It is not surprising that the privacy exemption, section 56(1)(a), is relied upon more than any other exemption. The protection of an individual's 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. Frequently, all that will be deleted in these cases will be a name, a home address or telephone number.

3.5.9 Secrecy exemption

Information was refused on 2,039 pages because of secrecy provisions in section 48 of the Act. The Department of Health and Families used this exemption on 2,029 occasions, which is to be expected given it is the Department with responsibility for secrecy provisions such as information relating to adoption information.

3.5.10 Ombudsman investigation exemption

Information was refused on 1,773 pages pursuant to section 49C(a) of the Act because the information was contained in a complaint under the *Ombudsman Act*. This exemption was used on 1,634 occasions by the Police.

3.5.11 Police complaints exemption

The fourth largest category was information that was refused because it would reveal information about the conduct of a Police complaints resolution process under section 49C(b)(iii) of the Act. This exemption and the exemption above only commenced on 1 July 2009 and they have clearly been used extensively by Police to refuse access to information. Apart from the privacy exemption, the other frequently used exemptions have no public interest test.

In total, the Department of Health and Families claimed exemptions 5,493 times which is the highest number of exemptions followed by the Police who claimed exemptions on 4,708 occasions.

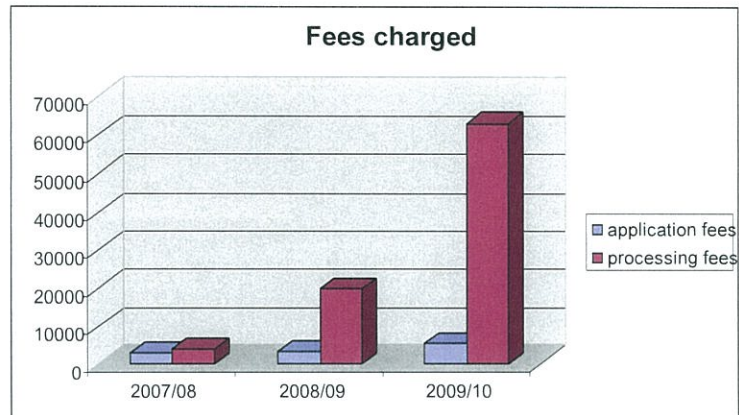
Most used exemptions:

Section	Exemption provision	No. of pages
56(1)(a)	Unreasonable interference with a person's privacy	5,314
48	Secrecy provisions	2,039
49C(a)	Complaint under the <i>Ombudsman Act</i>	1,773
49C(b)(iii)	Conduct of Police complaints resolution process	1,634
45(1)(a)(i)	Brought into existence for submission to an Executive body	551
57(1)(b)	Business, commercial or financial undertaking	438
52(1)(a)	Deliberative processes	314
45(1)(a)(iii)	Was considered by an Executive body	266
49(d)	Legal professional privilege	230
55(3)	Communicated in confidence	219
49A(a)	Obtained or created in the course of an investigation, audit or inquiry	199
46(2)(b)	Disclose the identity of a confidential source in the context of unlawful conduct or law enforcement	104

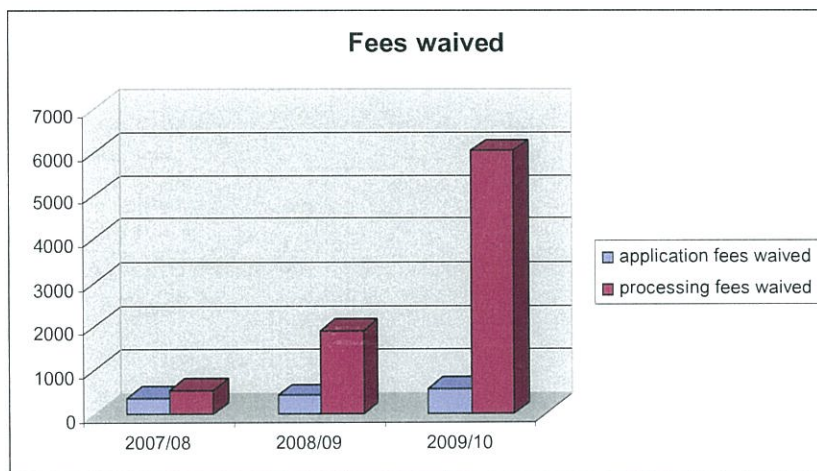
3.5.12 Application and processing fees

Organisations can charge for accepting and dealing with FOI applications in line with a fee structure set out in the Act and Regulations. Organisations have the discretion to decide whether to waive or reduce a fee payable if it is appropriate to do so having regard to the circumstances of the application, including the financial circumstances of the applicant and the objects of the Act.

There has been a steady increase in application fees charged which would appear to correspond to the increase in the number of applications. Table 6 (in Appendix 2) shows details of the fees charged and fees waived or reduced by each public sector organisation.



The graph below indicates the amount of fees that were waived.



An increase in the processing fees over the last three years may be due to some applications requiring a greater amount of careful scrutiny to ensure that no exempt material is inappropriately released. It is also consistent with the increase in number of pages released.

During the year, the Office was asked to consider whether the application fee should be linked to other fees payable to the government and be expressed in penalty units. The application fee would therefore rise with each adjustment of the penalty unit. The Office rejected this proposal preferring to keep the application fee fixed at \$30. The Office has only had one complaint that related to fees charged during the year.

3.5.13 Correction of personal information

Members of the public have the right to apply to an organisation to correct personal information if they think that the information sought to be corrected is inaccurate, incomplete or out of date. An organisation can decide to make the correction sought, to make a different correction or refuse to make the correction. 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 about the information.

Across all the agencies, there were only six requests for information to be corrected which compares with five corrections in 2008-09 (see Table 7).

Five of the correction applications in 2009-10 were made to the Police and as at 30 June 2010:

- one application was being assessed prior to acceptance;
- one application was accepted but not yet completed;
- two applications had the correction made as requested;
- on one application, Police considered and refused the request to correct; and
- on one application Police agreed to make a correction in another form and a statement was added to the personal information on the Police file giving some necessary clarification.

The only other organisation that handled a request for a correction was the Department of Health and Families and in that case, the correction was made as specified.

3.5.14 Review decisions

A person who is aggrieved by an initial FOI decision or a decision on a correction application has a right to seek an internal review of that decision by another officer within the organisation. The organisation may decide to confirm the initial decision, vary it in some respect, or revoke it and substitute another decision.

Table 5 (Appendix 2) outlines the review applications received during the year and how they were resolved.

Overall there were 24 applications for an internal review during the reporting period – the same number as last year. There were 16 reviews conducted with seven remaining open at the end of the reporting period. Of those conducted, nine decisions were confirmed, two were revoked and five were varied. Of most interest is the fact that on six occasions the applicant achieved a better result through the review process.



3.5.15 Exemption certificates

In accordance with section 60 of the Act, the Chief Minister has the power to issue an exemption certificate, certifying that particular government information is exempt because it is information referring to:

- the workings of the Executive Council, Cabinet, or the Territory economy;
- security and law enforcement; or
- privacy or cultural information.

An exemption certificate is conclusive evidence that it is not in the public interest to disclose the information. It can only be granted for a maximum of two years, but can be renewed.

There is no requirement for the Chief Minister to consult with this Office prior to issuing an exemption certificate.

Section 98(2)(c) of the *Information Act* requires the Commissioner to report on the number of exemption certificates that are issued.

The Chief Minister has advised that, following a request from the Police Commissioner, he issued an exemption certificate during the year. This is the first certificate that has been issued since the commencement of the Act. It remains in force for up to two years. The Exemption Certificate certifies that any information created, compiled, received or used by the Northern Territory Police Operational Intelligence Section is exempt because it is information referred to in section 46(1)(b) of the Act, being information the disclosure of which would prejudice the maintenance of law and order in the Territory.

The Office has a good working relationship with the Police and it fully supports the need for the Police to have robust powers to collect intelligence and protect their sources. However, the preference of this Office would be to work with the Police to develop a more clearly defined classification of exempt material or an amendment to the Act that would protect necessary Police Intelligence whilst still maintaining a transparent open environment where possible.

It is noted that the ability to issue exemption certificates has been abolished by the Commonwealth, New South Wales and Queensland.

Appendix 3 contains information about the exemption certificate issued this year.

4 FOI complaints to the Information Commissioner

4.1 Handling FOI complaints

The Office of the Information Commissioner may receive complaints from:

- an FOI applicant who objects to an internal review decision by a public sector organisation to refuse access, to refuse correction or to charge a fee;
- an applicant who is dissatisfied with the length of time taken by an organisation to process an application; or
- a third party who objects to an FOI decision to disclose information.

When the Office deals with a complaint, it is independent. It does not take sides. It does not represent complainants, government organisations or anyone else involved in a complaint. It does not give legal advice.

During the reporting period, staff in the Office worked with government organisations to assist them in developing internal structures to resolve issues before they reach the stage of a formal complaint to the Commissioner. Similarly, they worked with potential complainants to encourage and assist them to resolve particular issues in a timely and informal manner.

The preferred outcome is for the parties to agree on a solution.

If the parties do not resolve matters between themselves, the Information Commissioner must conduct a mediation and, if no resolution is reached, a hearing at which binding orders may be made.

4.2 FOI complaints in 2009-10

Table 8 shows the number of FOI complaints and their outcome.

Table 8 - FOI Complaints to the Information Commissioner							
Respondent Organisation	Lodged	Not accepted	Resolved informally	Prima Facie	Mediation	Lapsed / Withdrawn	Open at end of year
DCM	0 (1)			1			0
DET	1 (4)			4	2		2
DHF	2 (7)	1	1	3	6		4
DHLGRS	0 (2)		1		1		0
DOJ	1* (0)						1
DLP	2* (1**)			1	1		3**
NTPFES	2 (4)			4	1		2
OCPE	0 (1)			1			0
CDU	0 (1)		1				0
DCC	0 (1)			1		1	0
TIO	0 (1)						1
Total	8 (23)	1	3	15	11	1	13

* Third party complaint for DOJ; and one of the two complaints to DLP was a third party complaint

** This complaint, carried over from 2008/09, included components for DOJ and NTT, as both organisations held information that was part of the initial application.

At the commencement of the reporting period, there were 23 FOI complaints which were carried over from the previous year. During the reporting period, a further 8 FOI complaints were lodged with the Office making a total of 31 FOI files handled during the year. The complaints were evenly spread out across organisations.

Staff were successful in resolving two complaints informally before the prima facie stage. The Office issued 15 FOI prima facie decisions during the year and closed 18 FOI complaint files. At the end of the reporting period, 13 FOI complaints were still being investigated.

4.3 FOI Prima facie decisions delivered in 2009-10

The decisions summarised below are the outcomes of investigations by the Office of the Commissioner as to whether, for each complaint, there was sufficient prima facie evidence to justify the complaint proceeding to mediation and/or a hearing.

A finding of prima facie evidence to justify a complaint means that the matter can proceed to be dealt with under the formal dispute resolution sections of the Act (ie mediation and a hearing). In practice, many disputes are settled between the complainant and the public sector organisation on the basis of the findings in the Commissioner's prima facie decision.

The effect of a finding that there is insufficient evidence is that the complaint is dismissed by the Commissioner leaving the complainant with the option of an appeal to the Supreme Court.

Summaries of some of the prima facie decisions made in the reporting period are outlined below.

Prima facie decision – unreasonable interference

The complainant sought access to the name of the owner of two unrestrained dogs that ran out in front of him and caused him to fall off his bicycle and suffer an injury to his lower leg.

The public sector organisation refused access on the grounds that the information was exempt pursuant to section 56(1)(a) of the Act because the disclosure of the information would be an unreasonable interference with the privacy of the owner.

Acting Commissioner Marcham noted the names of dog owners would ordinarily be kept confidential by the organisation however, had the owner disputed the facts of the case, the matter would have been dealt with by the courts and the name would have been released. The Office was not persuaded that disclosure would be an unreasonable interference with the owner's privacy.

The Office recognised that there can be a public interest in an individual receiving information if the person has suffered an actionable wrong and being permitted access to that information would assist that person to pursue a

remedy which the law affords that was stronger than protecting the privacy of the person concerned. The complaint was substantiated.

Prima facie decision – fees

The complainant had applied to a public sector organisation for a waiver of fees in relation to access to documents that he sought to undertake a research project. The organisation, in dealing with the application for fee waiver as a threshold matter prior to processing the FOI request, refused to waive the fees.

The complainant provided detailed reasons as to why he felt that the waiver should be granted having regard to the objects of the Act, not on the grounds of impecuniosity or indigence.

The Office noted that the organisation had a policy in place to provide information for research purposes to students and others free of charge. Acting Commissioner Bradshaw found the organisation's policy of providing information free of charge for research was appropriate and refused to waive the FOI fees payable.

Prima facie decision – Cabinet exemption

The complainant sought access to information about the sites that had been identified as the potential location for a new public building. The organisation refused access on the basis of section 45(1)(a)(i) of the Act because it had been brought into existence for submission to, and consideration by, an Executive body. The organisation provided the Office with a Cabinet Decision requesting the Department to investigate certain options in relation to the potential location but the Deputy Commissioner did not accept that documents created before the date of that Cabinet Decision could be exempt under section 45(1)(a).

The Deputy Commissioner also refused to accept that information that was purely statistical, technical, scientific or factual material could be exempt. With the exception of five documents that were found to be exempt, the remaining documents were not. The Deputy Commissioner found that there was sufficient prima facie evidence to substantiate the complaint. The respondent organisation maintained its position that the information was exempt but decided to release the information to the respondent.

Prima facie decision – anonymity

The complainant sought access to information contained in an "anonymous grievance" about him.

The organisation relied on the exemption in section 56(1)(a) of the Act that releasing the information would be "an unreasonable interference with a person's privacy" because there was some identifying information in the complaint. The organisation also argued that it was required by IPP 8 to protect the anonymity of the complainant.

The Office found that IPP 8 does not create a blanket right to conduct all dealings with an organisation anonymously, that there was sufficient prima facie

evidence that not all reasonable steps had been taken to locate the information and that the organisation did not have an adequate basis to refuse access using section 56(1)(a).

Prima facie decision – correction

The complainant had been refused correction of documents in the manner sought. The organisation acknowledged that the information it held was incorrect, advised the complainant that some records had been amended and others deleted, and prepared a statement to be placed in the complainant's records. The complainant sought the insertion of an alternative statement in all relevant records.

Acting Commissioner Bradshaw considered that the organisation had provided adequate reasons why the correction should not be made as requested by the complainant, but there was sufficient prima facie evidence for the complainant's view that the statement should include detail. He referred the matter of the wording to mediation unless it was first resolved between the parties.

5 Privacy protection

Part 5 of the *Information Act* is concerned with information privacy; that is, how an individual's personal information is collected, handled, used and protected by public sector organisations.

The *Information Act* protects an individual's privacy by providing a set of principles and guidelines for the implementation of responsible procedures in public sector organisations when handling personal information. Members of the public have the right to find out how their personal information is collected, handled and used and have the right to complain if someone interferes with their privacy. The *Information Act* also provides remedies if an individual's privacy has been interfered with.

5.1 Privacy activity in 2009-10

The Office of the Information Commissioner has continued to work with organisations and to stress the need to:

- ensure that staff receive regular training sessions so that they are aware of the importance of protecting their clients' privacy;
- undertake regular privacy audits to ensure that information is collected, handled, used and stored in compliance with the IPPs;
- have in place a policy document that expresses how the organisation handles privacy complaints;
- have mechanisms to record and analyse complaints and complaint trends;
- ensure that executives within organisations promote respect for privacy by example.

5.2 Public sector organisations' responsibilities

Organisations cannot simply rely on complaints to guide their efforts to protect individual privacy. It is inevitable that the number of formal complaints and inquiries will only ever represent a limited portion of instances of interference with privacy. In many cases an individual's privacy may be interfered with but they will simply never find out. Their personal information is being taken and held by public sector organisations but they must rely on the custodians of that information to treat it with respect and protect the information.

For this reason, developers of new systems, procedures and policies must build privacy assessment and protection into their development processes. Existing systems must be subject to review and audit to ensure that privacy is adequately protected.

5.3 Privacy complaints to the Commissioner

The Office of the Information Commissioner may receive complaints from a person who is not satisfied with the response of an organisation to a privacy complaint.

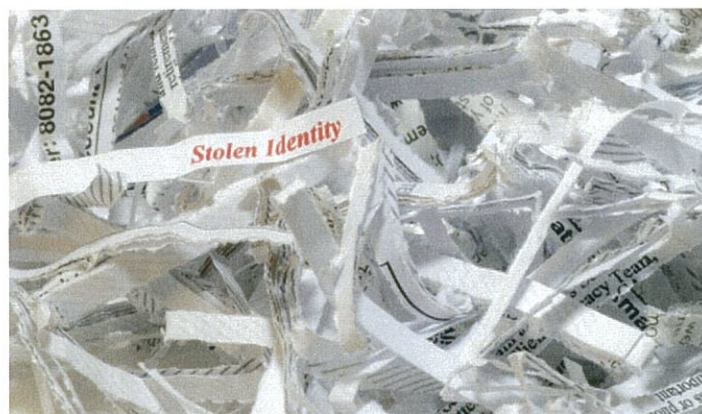
5.4 Handling privacy complaints

When the Office deals with a complaint, it is independent. It does not take sides. It does not represent complainants, government organisations or anyone else involved in a complaint. It does not give legal advice.

During the reporting period, staff in the Office worked with government organisations to assist them in developing internal structures to resolve privacy issues before they reach the stage of a formal complaint to the Commissioner. Similarly, they worked with potential complainants to encourage and assist them to resolve particular issues in a timely and informal manner.

The preferred outcome is for the parties to agree on a solution.

If the parties do not resolve matters between themselves, the Information Commissioner must conduct mediation and, if no resolution is reached, a hearing takes place at which binding orders may be made.



5.5 Privacy complaints in 2009-10

A person may complain to an organisation if he or she believes that the organisation has breached that person's privacy. If the person does not receive a response from the organisation, or is not satisfied with the response, he or she may complain to the Information Commissioner. Complaints that have a privacy element may also be referred to the Information Commissioner by bodies such as the Northern Territory Ombudsman and the Health and Community Services Complaints Commissioner.

Table 5 shows the number of privacy complaints made in 2009-10.

Table 9 - Privacy complaints to Information Commissioner							
Respondent Organisation	Lodged	Not accepted	Resolved Informally	Transferred	Prima Facie	Mediated	Open at end year
DHF	1 (1)					1**	1
DHLGRS	0 (1)						1
NTPFES	2 (3)		1		2		4
OTHER	1 (0)						1
TRANSFER	1 (0)			1			0
TOTAL	5 (5)*	0	1	1	2	(1)**	7

* figures (in brackets) are complaints carried over from the previous year.

** this matter was mediated in 2008/09 but final settlement did not occur until this reporting period.

At the commencement of the reporting period, there were five privacy complaints open and the Office received five new complaints during the year. One complaint was transferred to the Office of the Federal Privacy Commissioner and, of the ten complaints handled during the reporting period, seven were carried forward to 2010-11.

Two prima facie decisions were issued during the reporting period.

Prima facie decision 1.

A person complained that an organisation had breached his privacy by revealing personal information. There was a history of on-going complaints about each other between the complainant and clients of the organisation. While investigating an incident, the organisation had sought the advice of persons who were known to the complainant.

The organisation argued that disclosure of the information was justified by IPP 2.1(d) because there was a serious and imminent threat to the individual or another individual's life, health or safety or a serious threat to public health or safety.

Although it was found that the disclosure of the information was motivated by a genuine desire to protect the organisation's clients, the incident that triggered the disclosure was an inadequate basis for contacting the acquaintances. The

Deputy Commissioner found that there was sufficient prima facie evidence to substantiate the matter complained of.

Prima facie decision 2.

A person complained that officers in an organisation had accessed a database without authorisation and had disclosed information found on that database.

The organisation conducted an audit and provided this Office with evidence that the organisation had taken reasonable steps to protect the information it held.

The complainant alleged that the organisation had failed to take reasonable steps to ensure the information it holds is accurate, complete and up-to-date and that the organisation had disclosed information about him without authorisation. It was decided that it was not possible to conclude that the source of the disclosure was a person who had accessed the database. The Deputy Commissioner found that there had been no unauthorised disclosure.

6 Other functions of the Information Commissioner

6.1 Promoting awareness about FOI and privacy.

Staff in the Office are aware of the importance of informing people about their rights and obligations under the *Information Act* and they spend a significant proportion of their time promoting FOI and privacy through the following:

- responding to general inquiries and formal requests for advice;
- developing and facilitating training courses;
- participating in community events and using the media to promote FOI and privacy;
- developing appropriate educational material for distribution among public sector organisations and the public; and
- using a variety of methods to promote good FOI and privacy practices among public sector organisations.



6.2 General enquiries

The number of enquiries received is considerable and the Office prides itself on being approachable, informative and timely in its responses. People can contact the Office by telephone 1800 005 610 or e-mail infocomm@nt.gov.au.

During 2009-10, the Office responded to 402 enquiries – 95% of which received a response within 24 hours. The remainder involved research, liaison with other organisations or the provision of lengthy policy advice.

6.3 Presentations

Staff at the Office conducted or facilitated 16 presentations during the year which were attended by 304 participants. The need for training amongst public sector employees has changed now that the Act has been in operation for seven years. Whilst the Office continues to conduct training at a number of induction courses, organisations are now seeking more detailed sessions, particularly about privacy. Each presentation is tailored to the needs of the audience. These are some examples of presentations delivered:

- North Australian Aboriginal Justice Agency, where officers were particularly interested to learn about the obligations of Police to provide information to their service, what could be charged for providing copies of documents and tapes, and the privacy requirements relating to access to CCTV footage of their clients.
- Department of Natural Resources, Environment and the Arts in Katherine, where staff learnt about the exemption provisions of the Act and advice on how to handle people's personal information in compliance with the IPPs as well as a brief summary of the *Public Interest Disclosure Act*.
- Victoria Daly Shire Council, where councillors were keen to learn about FOI and what information people might be able to access.
- The Chief Executive Officer of Dolfin Software and two IT consultants from INContext Solutions who work with government agencies and wished to understand and improve their standards of business practices and records management.
- The Police Directors' Forum where participants were keen to meet the new Commissioner and hear about her attitude towards the *Information Act* and the *Public Interest Disclosure Act*.
- Department of Business and Employment where employees who administer Workers Compensation claims wished to understand how the privacy requirements interact with people's obligations to disclose information in relation to workers compensation matters.
- Northern Territory Treasury, which organises the Government Graduate's program. This has become an annual event, whereby the Commission provides an overview of the obligations of public sector organisations when processing an FOI application and handle people's personal information under the *Information Act*. This year, the session included a brief summary of the *Public Interest Disclosure Act*.

Megan Carter of Information consultants Pty Ltd, who is renowned for her FOI training in Australia and overseas, visited the Northern Territory in April 2010, at the request of two public sector organisations. Ms Carter took the opportunity

to conduct the two-day FOI course for Information Officers across the NT, delivered on many previous occasions.

6.4 Privacy Awareness Week

Privacy Awareness Week (PAW) is an annual event to raise awareness about the importance of protecting privacy. It is jointly promoted by the Privacy Commissioners from Australia, the Northern Territory, New South Wales, Victoria, New Zealand, Hong Kong, Korea, Canada and British Columbia.



PAW 2010 was again celebrated in the first week of May 2010. The theme this year was "Privacy - It's In Your Hands" and the main event was the launch of an ID Theft tool, produced by Norway but, with their permission and a lot of hard work from the New Zealand Office of the Privacy Commissioner, adapted to suit the populations of the Asia Pacific region.

The ID Theft tool was received with much enthusiasm by people of all ages in all regions. It is accessible from the Commissioner's website www.privacy.nt.gov.au or the PAW website, set up for Privacy Awareness Week, by the Australian Office of the Privacy Commissioner <http://www.privacyawarenessweek.org/>

The ID Theft tool allows a person to test how well prepared they are to protect themselves from predators who, at best share private information and, at worst, take over one's identity which may have severe financial and other consequences. The tool has 11 topics ranging from the security of your wallet, credit card and rubbish bin, to the sharing of information on the internet or mobile phone. There are useful tips throughout the tool and most people found it fun to test themselves.



6.5 The Show Circuit

The Commission participated in the overall Department of Justice activity at the annual show circuit. Information about the Office was available at the Alice Springs, Tenant Creek, Katherine and Darwin Shows.

6.6 Information Officers' Forum

The Office organises a forum of Information Officers three or four times per year. This provides an opportunity for Information Officers to meet and discuss specific concerns or areas of interest about the Act. Information Officers are brought up to date with developments in the field of FOI and privacy, have the opportunity to share experiences and enhance their skills and expertise. Feedback from Information Officers suggests that they find the Forums to be most useful.

The forums for 2009/10 were held in November 2009 (attracting 29 information officers), March 2010 (32 participants) and June 2010. The June forum was organised to coincide with the Asia Pacific Privacy Authorities (APPA) which was held in Darwin on 3 and 4 June and attracted 60 participants.

6.7 Guidelines

One of the roles of the Information Commissioner is to produce guidelines to help people understand and interpret the *Information Act*. Each guideline takes an aspect of the Act, explains the procedures to be followed, and provides summaries of how certain words or expressions have been interpreted in other jurisdictions. They also provide a list of relevant case law. Many of the guidelines focus on the FOI exemption provisions.

A new guideline was published in October 2009 entitled "Our Complaints Process". It was considered necessary in order to progress the resolution of existing complaints and to impose timeframes for response on organisations.

Some concerns have been raised about the new guideline – particularly by information officers – that they may no longer have a detailed *prima facie* decision which they consider helpful in the resolution of the dispute. The Commissioner intends to review the guideline after 12 months and consider at that stage whether any changes need to be made to the current process. A current list of guidelines is available from the website www.foi.nt.gov.au

6.8 Website

The website of the Office of the Information Commissioner (www.foi.nt.gov.au) is designed to be a useful easy-to-read tool for Information Officers and members of the public. It contains information about how to make an FOI or correction application, how to complain about a breach of privacy, information about the complaint process and possible costs, copies of the guidelines, grants of authorisation and decisions of the Office. The Office hopes to improve the website in the coming year by providing examples of its decisions in a form that does not identify the parties

..

6.9 Staying abreast of developments in FOI and privacy issues

The Act requires staff in the Office to research and monitor national and international developments in relation to FOI and privacy. This is achieved by reading the latest publications, networking with other agencies involved in the areas of FOI and privacy and through meetings and conferences. Information gained is passed to Information Officers at their Forums, at training sessions, presentations and other events.

6.10 Asia Pacific Privacy Authorities Forum

Asia Pacific Privacy Authorities (APPA) is the principal forum for privacy authorities in the Asia Pacific Region to form partnerships and exchange ideas about privacy regulation, new technologies and the management of privacy enquiries and complaints.

The 32nd forum took place in Adelaide in December 2009 and Acting Commissioner Bradshaw represented the Northern Territory at the Forum.

6.11 The 33rd APPA Forum – Darwin, June 2010

Darwin was the host for the 33rd Forum which took place in June 2010. It was the first time that Darwin had hosted the Forum. Commissioners or senior privacy personnel attended from across Australia, Hong Kong, Japan, Korea, Macao, New Zealand, and the United States.

The forum included a public session, entitled *Privacy and Society*. Sixty information, policy and legal officers attended, as well as the interstate and overseas guests. The following speakers participated:

- The Hon. Delia Lawrie MLA, Deputy Chief Minister and Attorney-General, opened the Forum and welcomed delegates to Darwin;
- The Hon Austin Asche AC QC provided his insight into privacy issues within an historical context;
- Mr Michael Grant QC, Solicitor-General, spoke on the special considerations that can arise in relation to the Northern Territory Indigenous population and he noted that the very notion of “personal” information has limited application in Aboriginal law;
- Dr Colin Bennett, Visiting Professor, University of New South Wales from the University of Victoria, British Columbia, Canada, spoke about privacy intrusions suffered by the First Nations Peoples in Canada;
- Ms Marie Shroff, the New Zealand Privacy Commissioner, spoke of the New Zealand experience and how the Maori perception of privacy has evolved with urbanisation;
- Mr Phillip Piper, Director of Government ITC Security gave a presentation about the information security concerns facing government bodies such as the Northern Territory Government and stressed the need for constant vigilance.
- A panel discussion on topical privacy issues with Ms Karen Curtis, the Federal Privacy Commissioner, Mr Mark Wood, a Licensing Inspector with the Department of Justice, and Mr Roderick Woo, the Privacy

Commissioner for Personal Data in Hong Kong and Ms Helen Versey, the Victorian Privacy Commissioner.



Back row – From left: Ann-Marie Fishburn, Manager FOI & Privacy, South Australia; David Taylor, Director Privacy Awareness, Privacy Victoria; Karen Curtis, Privacy Commissioner, Australia; Adam Roach, Department of Justice & Community Safety, ACT; Zoe Marcham, Deputy Information Commissioner, Northern Territory; Roderick Woo, Privacy Commissioner, Hong Kong; Brenda Monaghan, Information Commissioner, Northern Territory; Kim, Ho Seong, Korea Internet & Security Agency; Dr Colin Bennett, Visiting Professor University of NSW (guest speaker); Ken Yang, Office for Personal Data Protection, Macau; Henry Chang, Office of the Privacy Commissioner for Personal Data, Hong Kong; Yoon, Kwon Il, Korea Internet & Security Agency.

Front Row – From left: Hui Ling Goh, Federal Trade Commission, USA; Marie Shroff, Privacy Commissioner, New Zealand; Helen Versey, Privacy Commissioner, Victoria; Sonia Chan, Office for Personal Data Protection, Macau; Han, Ji Hye, Korean Communications Commission; Yoichito Itakura, Consumer Affairs Agency, Japan.

Feedback confirms that the forum was successful in raising awareness of topical privacy issues and concerns that impact on all of us.

6.12 Participation in Authorities, Chapters and Committees

While APPA is an important forum, the Office also maintains networks with the following national and international organisations whose purpose is FOI, privacy, data protection, or a combination of all three:

ICIC	International Conference of Information Commissioners
INDPC	International Network of Data Protection Communicators
ISPPPD	International Standards for the Protection of Privacy and Personal Data
PAA	Privacy Authorities Australia
iappANZ	Australian and New Zealand Chapter of the International Association of Privacy Professionals

It is invaluable to be involved in working groups to hear each others' views and provide input with respect to privacy protection.

6.13 Providing policy assistance and advice

The Act requires the Information Commissioner to examine and assess proposed Northern Territory legislation and policies that raise issues relevant to FOI and privacy.

Although staff in the Office are not able to provide legal advice, they regularly provide policy assistance and advice to government organisations that are developing or reviewing practices, policies or legislation.



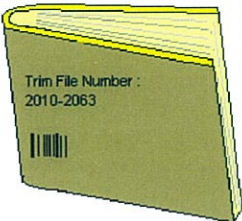

6.14 Policy assistance and advice provided in 2009-10

During the year, the Office provided 478 hours of policy assistance and advice to government. This number of hours compares with 605 hours in 2008-09. The reduced number of hours reflects the reduced number of staff in the Office. Most enquiries come from government agencies rather than from members of the public.

The Office is also required to examine and assess proposed legislation for relevant FOI or privacy issues. During the year the Office was asked to provide comments on a number of draft Bills and Cabinet Submissions. Some of these raised significant privacy issues which required staff to have numerous meetings with, and provide advice and comments to, the Department responsible for the Bill or Submission.

6.15 Records Management

The Department of Justice is responsible for the *Information Act* with the exception of Part 9 of the Act which deals with Records and Archive Management. The Department of Business and Employment is responsible for that section of Part 9 that relates to Records Management and the Department of Natural Resources, Environment, the Arts and Sport is responsible for that section of Part 9 that relates to Archives Management.

FOUR Rs OF RESPONSIBLE RECORDS MANAGEMENT			
			
Respond	Refer	Record	Recycle

The Records Policy Unit in the Department of Business and Employment is responsible for providing guidance to organisations about records management. The Department must consult with the Information Commissioner before Standards are approved by the Minister, to ensure consistency with the objects

of the *Information Act*. Comments on the revised draft *Records Management Standards for Public Sector Organisations in the Northern Territory* were sought from this Office in March 2010.

The 2010 draft was more comprehensive and easier to read than the previous Standard. This Office provided comments on two versions of the draft as the Standard was developed and it was signed by the Commissioner on 10 March 2010. It is anticipated that the Standard will be distributed in August this year.

Some organisations have encountered difficulties in processing an FOI request because of inadequate records management systems. Further, resolution of complaints is often delayed because of a failure of organisations to provide answers to questions or produce documents in a timely manner. This delay causes unnecessary stress to complainants. It is important that organisations regularly review their file management procedures to ensure that they comply with the relevant Records Management and Archives Standards. The *Information Act* provides that it is the responsibility of the Chief Executive Officer to ensure that his or her organisation complies with the provisions of the Act. This Office will continue to encourage organisations to improve their compliance in this area.

6.16 Need to support Information Officers

The Office encourages Chief Executive Officers and other senior personnel to support their Information Officers. It is vitally important that Information Officers;

- receive regular training about the Act;
- are familiar with the business operations and administrative arrangements of the organisation;
- are at a sufficiently senior level to have the confidence to approach senior personnel in the organisation and discuss an FOI application or privacy complaint; and
- have the support of their Chief Executive Officer.

The Commissioner thanks all those Information Officers who work hard to ensure that the Objects of the *Information Act* are respected within their organisation to create the proper balance between freedom of information and protection of privacy.

7 Future Directions

The Office of the Information Commissioner will continue to undertake its statutory functions to the best of its ability within resources.

New technologies or new uses of technologies are having a profound impact on the way in which government organisations collect and use personal information. Organisations are starting to realise that it is necessary to identify and analyse privacy issues at the development stage of a project to avoid costly and embarrassing mistakes at a later date. From experience to date, it is

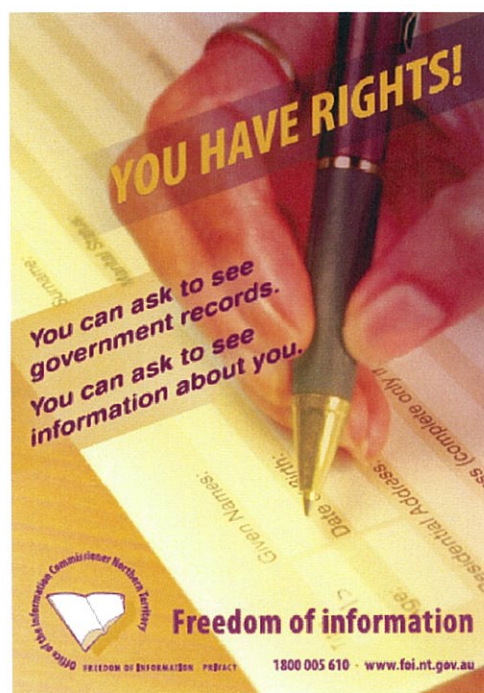
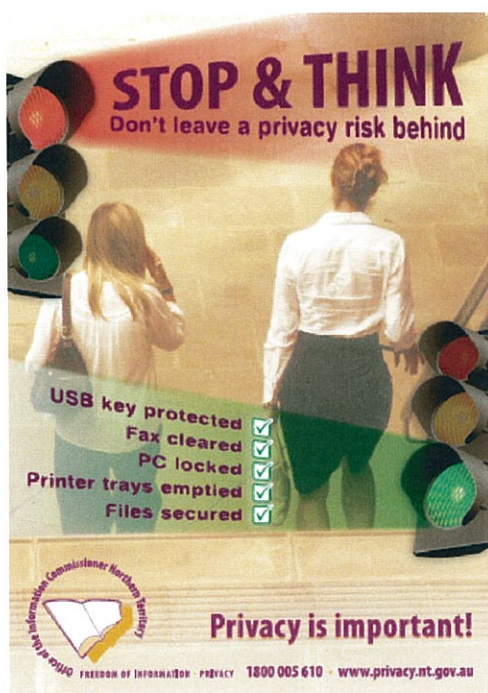
anticipated that advice about privacy implications will increasingly be sought from the Office.

In the coming year, the Commissioner plans to increase awareness about the importance of protecting personal information held by public sector organisations, focussing particularly on the potential data security risks associated with portable storage devices.

Finally, consideration should be given to legislative change to:

- empower information officers to require compliance with their requests for relevant information from others within their agency;
- provide the Information Commissioner with case management tools to support a timely resolution of applications and complaints.

And, last but not least, these are the new poster the Office has obtained with the assistance and cooperation of the Office of the Victorian Privacy Commissioner. The posters will be available soon...



Appendices

**OFFICE OF THE INFORMATION COMMISSIONER
OFFICE OF THE COMMISSIONER FOR PUBLIC INTEREST DISCLOSURES
Statement of Financial Performance
For the year ended 30th June 2010**

	\$ \$'000	\$ \$'000
INCOME		
Appropriation - Output		707
Goods and Services Received Free of Charge		69
TOTAL INCOME		<u>776</u>
EXPENSES		
Employee Expenses		718
<i>Administrative Expenses</i>		
Repairs and Maintenance		-
Purchase of Goods and Service*		165
Property Management	7	
Accommodation	3	
Agent Service Arrangement	1	
Communications	17	
Consultants	1	
Consumables / General Expenses	2	
Entertainment / Hospitality	2	
Information Technology Charges	28	
IT Consultants	1	
IT Hardware and Software Expenses	5	
Legal Expenses	2	
Library Services	2	
Marketing & Promotion	33	
Motor Vehicle Expenses	12	
Office Requisites and Stationery	5	
Official Duty Fares	4	
Other Equipment Expenses	14	
Training and Study Expenses	22	
Travelling Allowances	1	
Other Expenses	3	
Depreciation		4
DBE Services Free of Charge		69
TOTAL EXPENSES		<u>956</u>
NET SURPLUS/(DEFICIT)	-	<u>180</u>

Notes:

- 1) Financial Statements are prepared on Output Group basis, ie includes Corporate overheads
- 2) Output Appropriation Revenue provides the Government's funding for agency operations
- 3) Goods and Services received free of charge are recognised as revenue when a fair value can be reliably determined and the resources would have been purchased if it had not been donated. Use of the resource is recognised as an expense.

*Indicative figures for the Purchase of Goods and Services only

Statistics by public sector organisation

The following Tables set out information about FOI access and correction applications made to public sector organisations, and FOI and privacy complaints made to the Information Commissioner during 2009-10:

- **Table 1** **Overview of FOI access applications**
- **Table 2** **Access overview (access granted in full, in part, or refused)**
- **Table 3** **Reasons for refusal**
- **Table 4** **Exemptions relied on (by page)**
- **Table 5** **FOI internal review applications**
- **Table 6** **Fees charged / Fees waived or reduced**
- **Table 7** **FOI correction applications**

For easy reference, the abbreviations for public sector organisations referred to in the tables are as follows:

AGO	Auditor-General's Office
ASTC	Alice Springs Town Council
BSC	Barkly Shire Council
CDU	Charles Darwin University
DBE	Department of Business and Employment
DCC	Darwin City Council
DCM	Department of the Chief Minister
DET	Department of Education and Training
DHF	Department of Health and Families
DHLGRS	Department of Housing, Local Government and Regional Services
DLA	Department of Legislative Assembly
DLP	Department of Lands and Planning
DNRETAS	Department of Natural Resources, Environment, the Arts and Sport
DOJ	Department of Justice
DOR	Department of Resources – previously Department of Regional Development, Primary Industry, Fisheries and Resources
MACDSC	MacDonnell Shire Council
NTEC	Northern Territory Electoral Commission
NTPFES	Northern Territory Police, Fire and Emergency Services
NTT	Northern Territory Treasury
OCC	Office of the Children's Commissioner
OMB	Ombudsman NT
RGSC	Roper Gulf Shire Council
TIO	Territory Insurance Office
TNT	Tourism NT

The information recorded in Tables 1-7 was provided to the Office by public sector organisations through a statistical return completed at the end of the reporting year. Information was also obtained from a central FOI dataset for those public sector organisations that accessed the network in TRIM to record their FOI data. The Office appreciates the co-operation of FOI and privacy administrators within organisations for completing the returns and for responding to requests for clarification about their FOI applications in a timely fashion.

Table 1 - Overview of FOI access applications

This table records the number of applications. Figures in brackets are for applications carried over from the previous reporting period.

Table 1	Lodged	Handled	Finalised	Not accepted	Pending acceptance	Transfer	Withdrawn	Pending at year's end
AGO	2	2	1					1
DBE	1	1	1					
DCM	21(4)	25	21		1			3
DET	14(1)	15	11				1	3
DHF	68(8)	76	62	4		4	2	4
DHLGRS	47(1)	48	45			1	2	
DOJ	47(6)	53	42	1		2	2	6
DLA	5	5	5					
DLP	22(1)	23	18	3				2
DOR	7(2)	9	6	1			2	
NRETAS	7(1)	8	2				4	2
NTEC	2	2	2					
NTPFES	176(12)	188	162	14			7	5
NTT	6(1)	7	4			1		2
OCC	2	2	1					1
OMB	2	2	2					
TOUR	1	1	1					
TIO	2	2	1	1				
CDU	1	1	1					
DCC	6(1)	7	6				1	
ASTC	1	1						1
BSC	1	1	1					
MACDSC	2	2	2					
RGSC	2	2	2					
TOTAL	445(38)	483	399	24	1	8	21	30

Table 2 - Access overview – (Access granted in full, in part or refused)

Table 2 shows the details of the information that was released either in full, in part or not at all. The table shows the number of applications and the number of pages.

Table 2	granted in full	granted in part	refused in full		pages in full	pages in part	refused in full
AGO	1				27		
DBE		1			428	13	2
DCM	2	12	7		2762	297	333
DET	8	3	1		934	38	314
DHF	38	15	9		29175	2855	1662
DHLGRS	18	20	7		4593	237	206
DOJ	24	9	9		2520	237	483
DLA	2	1	2		194	9	2
DLP	5	5	8		603	71	207
DOR	5		1		1849		462
NRETAS		2			246	797	
NTEC	2				153		
NTPFES	51	99	12		5320	790	2102
NTT			4				
OCC			1				
OMB	2				148		
TOUR		1			97	8	
TIO			1				
CDU		1			375	20	
DCC	1	5			244	27	81
ASTC							
BSC	1						
MACDSC			2				
RGSC		2				11	
TOTAL	160	176	64		49668	5410	5854

Table 3 - Reasons for refusal

This table records the reasons for refusal. In any one application, access to information may be refused for one or more reasons.

Table 3	exempt	publicly available	not exist	cannot find	cannot identify	unreasonable interference	confirm nor deny	not covered
AGO								
DBE	1							
DCM	13		6					
DET	5							
DHF	16		4	1		3		
DHLGRS	23	1	3					
DOJ	11		6	1				
DLA	3							
DLP	9	4	2		3			2
DOR								1
NRETAS	2							1
NTEC								
NTPFES	105		5		1		1	
NTT		1	3					
OCC			1					
OMB								
TOUR	1							
TIO								1
CDU	1							
DCC	5							
ASTC								
BSC								
MACDSC			1	1				
RGSC	2							
TOTAL	197	6	31	3	4	3	1	5

Table 4 - Exemptions relied on (by pages)

This table records the number of times that access to a page was refused 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 which means that sometimes information on one page was found to be exempt under several provisions (see Table 2 for the total number of pages to which access was denied either in part or in full).

If a public sector organisation did not report one or more pages in this category, the organisation is not mentioned in Table 4. Table 4 only lists the exemptions relied on by one or more public sector organisations during this reporting period.

Index of sections used for exemptions

- s.45 Executive Council, Cabinet, Territory economy
- s.46 Security and law enforcement
- s.47 Corresponding FOI laws
- s.48 Secrecy provisions
- s.49 Preservation of system of justice
- s.49A Information obtained or created because of investigation
- s.49B Information under *Public Interest Disclosure Act*
- s.49C Information under *Ombudsman Act*
- s.51 Inter-governmental relations
- s.52 Deliberative processes
- s.53 Effective operations of public sector organisations
- s.54 Health, safety, environment and place of significance
- s.55 Confidentiality obligations, confidential sources
- s.56 Privacy and cultural information
- s.57 Commercial and business information

Table 4 is spread over two pages, with the 2nd page a continuation of exemptions recorded about the number of times access to a page was refused, in full or in part.

Table 4 - Exemptions relied on (by pages)

Table 4	45(1) (a)(i)	45(1) (a)(ii)	45(1) (a)(iii)	45(1) (a)(v)	45(1) (a)(vii)	45(1) (b)	46 (1)(a)	46 (2)(b)	46 (2)(c)	47	48	49(a)	49(b)	49(c)	49(d)	49(A) (a)	49(B) (a)	49(C) (a)
AGO																		
DBE																		
DCM	212	62	143															
DET															4	188		128
DHF	22	9	8	1	2		1	3	1	1	2029	6	8	13	16	11	11	11
DHLGRS		16													6			
DOJ	180	2	115	2	15		4							1	121			
DLA									2		2				5			
DLP	136						10	1			8							
DOR																		
NRETAS																		
NTEC																		
NTPFES								100	35	28					78			1634
NTT																		
OCC																		
OMB																		
TOUR	1					2												
TIO																		
CDU																		
DCC														81				
ASTC																		
BSC																		
MacDSC																		
RGSC																		
TOTAL	551	89	266	3	17	2	15	104	38	29	2039	6	8	95	230	199	11	1773

Table 4 - Exemptions relied on (by pages) – continued

Table 4 continued	49(C) (b)(iii)	51	52 (1)(a)	52 (1)(b)	53(a)	53(c)	53(d)	54(b)	54(ca)	54(d)	55(1)	55(3)	56 (1)(a)	56 (1)(b)	57 (1)(a)	57 (1)(b)	57 (3)(b)	Totals
AGO																		
DBE					5							1			9			15
DCM		12											201	10	18	5		663
DET													79					399
DHF			227				3	1			29		2824		6	250		5493
DHLGRS		1	4	45									214			170		456
DOJ			21							4		141	110				4	720
DLA				12		2	1		2				11			1		38*
DLP			40										11			1		207
DOR																		
NRETAS			2										795					797
NTEC																		
NTPFES	1634					86				8		77	1017			11		4708
NTT																		
OCC																		
OMB																		
TOUR													5					8
TIO																		
CDU													20					20
DCC													27					108
ASTC																		
BSC																		
MACDSC																		
RGSC			20								20							40
TOTAL	1634	13	314	57	5	88	4	1	2	12	49	219	5314	10	33	438	4	13672

* Part of this information relates to security camera footage

Table 5 - Internal review applications

This Table records details of applications to each organisation for internal review of an initial FOI decision.

Table 5	lodged	With-drawn	open at year's end	finalised	not accepted	decision confirmed	decision varied	decision revoked	better outcome
AGO									
DBE									
DCM	7		4	3		1	2		2
DET	1		1						
DHF	3			3			3		2
DHLGRS									
DOJ	1			1		1			
DLA									
DLP	4		2	2		2			
DOR									
NRETAS									
NTEC									
NTPFES	4			4		2		2	2
NTT	1			1		1			
OCC									
OMB									
TOUR									
TIO	1				1				
CDU									
DCC	2			2		2			
ASTC									
BSC									
MACDSC									
RGSC									
TOTAL	24		7	16	1	9	5	2	6

Table 6 – Fees charged / Fees waived or reduced

This table records the fees charged for applications and processing. However, the figures in the table do not represent a complete picture of the total 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 will not usually calculate fees that would have been charged.

Table 6 – Fees charged / Fees waived or reduced (continued)

Table 6	Application fees charged	Processing fees charged	total charged	A fees waived/ reduced	P fees waived/ reduced	total waived
AGO	60		60			
DBE	30	545.46	575.46			
DCM	720	10630.84	11350.84			
DET	300	1567.5	1867.5			
DHF	600	39128.72	39728.72	120	2130.1	2250.1
DHLGRS	300	850	1150		466	466
DOJ	600	716	1316	30	1450	1480
DLA	150	422.5	572.5			
DLP	450	2224.9	2674.9	120	1875	1995
DOR	150	3483.4	3633.4	60		60
NRETAS	210		210			
NTEC	60		60			
NTPFES	1140	3232.57	4372.57	30	100	130
NTT	180		180	150		150
OCC	60		60	30		30
OMB	60		60			
TOUR	30	200	230			
TIO						
CDU	30		30	30		30
DCC	90		90			
ASTC	30		30			
BSC	30		30			
MACDSC	0					
RGSC	0					
TOTAL	5280	63001.89	68281.89	570	6021.1	6591.1

Table 7 - Correction applications

Table 7	lodged	pending acceptance	with-drawn	open year's end	finalised	correction made as specified	made in another form	no correction made	statement associated with information
DHF	1				1	1			
NTPFES	5	1		1	3	1	0.5	1	0.5
TOTAL	6	1		1	4	2	0.5	1	0.5

This Table records details of applications for correction of personal information. Applications are made on the basis that the information 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 any 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.

Alternatively, the applicant has the right to lodge a complaint with the Information Commissioner.

Exemption Certificates

At the request of the Police, the Chief Minister has advised that he issued one exemption certificates during the year. This is the first certificate that has been issued since the commencement of the Act. The Exemption Certificate certifies that the government information identified below (as per Part 2 of the Certificate) is exempt because:

it is information referred to in section 46(1)(b) of the Act, being information the disclosure of which would prejudice the maintenance of law and order in the Territory by:

- a) prejudicing the investigation of a breach or possible breach of the law;
- b) disclosing the identity of a confidential source of information connected with the detection of unlawful conduct or the enforcement or administration of the law;
- c) disclosing methods or procedures for preventing, detecting, investigating or otherwise dealing with matters connected with breaches or evasions of the law and disclosure of such methods or procedures prejudices or is likely to prejudice their effectiveness; or
- d) endangering the life or physical safety of a person.

Part 2: the government information

1. The information contained in any document created, compiled, received or used by the Northern Territory Police Operational intelligence Section or any field officers of that Section or by any prior or successor section, unit or entity exercising any of the functions of that Section or field officers of any such prior or successor section, unit or entity in the period of ten year's prior to the commencement of Part 3 of the Act and at any time thereafter (including after the date of this Certificate) that relates to the enforcement or administration of the law, including, without limitation, to any of the investigatory, policing, intelligence, surveillance and prosecutorial functions of the Northern Territory Police, Fire and Emergency Services, including, without limitation, the information in the following documents:

2. Police information Reports and drafts, notes and summaries of and extracts from such Reports, and information used to prepare such Reports;

3. Documents classified by those Services as "Highly Protected" from time to time;

4. Documents referring to covert methods and procedures employed or at any time proposed to be employed by those Services;

5. Any document from which or on the basis of which the identity of a confidential source of information connected with the detection of unlawful conduct or the enforcement or administration of the law would be disclosed; and drafts, notes and summaries of and extracts from any such document and information used to prepare any such document;

6. All other reports, notes, summaries, extracts, correspondence and other documents howsoever described identifying or referring to any information received by the Northern Territory Police Operational intelligence Section or any field officers of that Section at any time concerning any conduct in breach, possible breach or suspected breach of any of the provisions of the *Criminal Code NT* or of any other provision of any Act or statutory instrument creating an offence under the laws of the

Northern Territory, including, without limitation, information received or created by Crime Stoppers Northern Territory;

7. All other reports, notes, summaries, extracts, correspondence and other documents howsoever described identifying or referring to any information created, compiled, received or used by the Northern Territory Police Operational Intelligence Section or any field officers of that Section at any time concerning:

- a) The protection of witnesses and any witness protection programme;
- b) The protection of human sources (police informants);
- c) The protection of Police officers working undercover;
- d) Surveillance functions;
- e) Terrorism and the protection of the public from terrorist acts;
- f) The protection of persons from violence, including domestic violence and violence against children;
- g) Pornography, including pornography distributed by electronic means or over the internet;
- h) Intelligence created, compiled, received or used by any intelligence service, unit or entity of the Northern Territory, the Commonwealth or of a State or other Territory;
- i) Serious or organized crime operating in or from the Northern Territory;
- j) Corruption or possible or suspected corruption of any person occupying or employed in any public office or position in the Northern Territory;
- k) Narcotics or other substances the use, sale, distribution or possession of which constitutes an offence under a law in force in the Northern Territory.

The Police have extensive powers that can be exercised over citizens. The exemption certificate gives the Police the power to decide what information falls into the broad categories set out in the certificate. There is no opportunity to gain access to information that falls within these categories even if it is suspected that the Police have acted in an inappropriate manner. The certificate enables the Police to act as they see fit without the public being able to scrutinise their activities.

This Office has indicated to the Police that it had some concerns that the *Information Act* may not adequately protect certain intelligence materials held by the Police. It has suggested on numerous occasions that this Office should work with members of the Police Force to create certain amendments that would protect necessary Police Intelligence whilst still maintaining a transparent open environment where possible without the need for an Exemption Certificate.

Changes to Public Sector Organisations

The Government reshuffle of December 2009 led to a number of changes that are important to remember when comparing this year's statistics with previous years:

- The **Department of Housing, Local Government and Regional Services** was created which included all functions previously undertaken by the Department of Local Government and Housing plus the Office of Indigenous Policy and Service Delivery Coordination Unit from the Department of the Chief Minister, and Regional and Indigenous Economic Development from the Department of Regional Development, Primary Industry, Fisheries and Resources.
- The **Department of Lands and Planning** was created which took on all matters relating to land planning, development and release, and strategic infrastructure planning functions of the former Department of Planning and Infrastructure, plus Territory Growth Planning, formerly with the Department of the Chief Minister, the Land Development Corporation, formerly with the Department of Business and Employment and NT Build, formerly with the Northern Territory Treasury.
- The **Department of Construction and Infrastructure** was created which took on all construction agency and capital work planning activities on behalf of other Northern Territory Government agencies which was formerly undertaken by the Department of Planning and Infrastructure.
- The **Department of the Chief Minister** lost responsibility for the Office of Indigenous Policy and Service Delivery Coordination Unit and Territory Growth Planning, with the continued responsibilities for the coordination of Territory 2030 implementation, Climate Change and the new responsibility for Energy Policy Coordination which came from the Department of Regional Development, Primary Industry, Fisheries and Resources.
- The **Department of Resources** took over responsibility for all the former functions of the Department of Regional Development, Primary Industry, Fisheries and Resources except for Regional and Indigenous Economic Development which transferred to the Department of Housing, Local Government and Regional Services and Energy Policy which transferred to the Department of the Chief Minister.
- The **Department of Business and Employment** retained all existing functions but the responsibility for the Land Development Corporation transferred to the Department of Lands and Planning.



Contact Details

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

GPO Box 3750 Darwin NT 0801

Freecall 1800 250 918

Fax (08) 8941 7238

<http://www.blowthewhistle.nt.gov.au/>

Street address:

**Office of the
Information Commissioner**

GPO Box 3750 Darwin NT 0801

Freecall 1800 005 610

Fax (08) 8935 7681

<http://www.nt.gov.au/justice/infocomm>

9-11 Cavenagh Street Darwin NT 0800