

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



**Annual Report  
2010-2011**







30 September 2011

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 2010 to 30 June 2011.

Yours sincerely

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

**Brenda Monaghan**  
Commissioner, Information and Public Interest Disclosures

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## Message from the Commissioner

I am pleased to present the second Annual Report of the Office of the Commissioner, Information and Public Interest Disclosures. The two arms of the Office, namely Freedom of Information (FOI) & Privacy and Public Interest Disclosures, share accommodation and resources but work separately as regards their investigative, complaints and advice functions.

This year has seen us refine and consolidate our practices so as to improve our efficiency and performance. The number of disclosure complaints under the *Public Interest Disclosure Act* has not reduced as initially predicted and on current assessment, high numbers will be received again in 2011-12. This has an impact on timeliness and despite a dedicated effort, we struggle to investigate all complaints received within an acceptable time frame. Although all matters assessed as public interest disclosures must be investigated, we have focussed our resources on the most serious and sensitive allegations of improper conduct.

One of our aims this financial year was to make sure that public bodies outside Darwin knew of our existence. This has had a marked impact on our work with 46% of disclosure complaints relating to public bodies outside Darwin. Complaints often seem to stem from poor financial and personnel management and inadequate administrative practices. This leads to systemic failures and on occasions it facilitates corrupt behaviour by rogue individuals that would not be possible in better managed bodies. My recommendations to several public bodies have addressed these deficiencies requiring changes to be made within specified timeframes.

It is noteworthy that responsible Chief Executives have been uniformly helpful when faced with an investigation by this Office. The opportunity accorded them to deal with matters in-house rather than through a public report tabled in Parliament is an effective incentive that is appreciated. Although public bodies generally have a long way to go in preparing disclosure support policies and systems, they have been willing to work cooperatively with us to ensure that disclosers and witnesses are provided with protection and support.

Our role in FOI and Privacy is set out in the *Information Act*. We deal with complaints against public bodies about privacy breaches or refusals to

give out government or personal information held by them. We also provide hundreds of hours of policy advice to government bodies each year. This function is of considerable benefit to the public interest as it prevents legislation being enacted and programmes implemented without due regard to FOI and privacy issues. The backlog of FOI investigations experienced in past years has now been dealt with and current delays in progressing some files is more likely to be caused by public bodies responding slowly or inefficiently to requests. It is hoped that the forthcoming review of the *Information Act* will provide this Office with more 'teeth' to case-manage complaints and ensure timelines are adhered to.

Finally, our two 'poster' education campaigns were widely distributed and well received. One was targeted at encouraging public officers to take simple precautions to protect private and confidential information. The second poster was aimed at raising public awareness of an individual's right to seek access to government information and to have their personal information protected.

Looking forward, this Office is focussed on the following:

- attempting to resolve the majority of public interest disclosure investigations in a more timely manner without compromising the integrity of the process;
- continuing to raise the profile of the Public Interest Disclosures Office across the NT 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.
- promoting safe, responsible information-sharing where appropriate to ensure that government information is accessible; and
- contributing to the review of the *Information Act* to promote the importance of FOI and privacy matters and adequately respond to the challenges ahead.

Throughout the past year, I have had commendable support and assistance from our Office staff namely Zoe Marcham, Allan Borg, Caroline Norrington, Adrian Buck, Helmy Bakermans, James O'Brien and Somsong Albert. I thank them all for their dedication and professionalism.



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 FOI and privacy under that Act. This is its 8<sup>th</sup> Annual Report.

The *Public Interest Disclosure Act* came into force on 31 July 2009 providing a new whistleblower investigation and protection service to the Northern Territory. This is its 2nd Annual Report.

### 1.1 Joint Office – location, structure and staffing

The joint Office is located on the 7<sup>th</sup> floor, 9-11 Cavenagh Street, Darwin, with a limited sharing of resources with the Office of the Anti-Discrimination Commissioner.

At 30 June 2011, our Office was comprised of the following personnel:

- 1 x ECO2 Commissioner, Information and Public Interest Disclosures – Brenda Monaghan.
- 0.6 x ECO1 Deputy Commissioner, Information and Public Interest Disclosures – Zoe Marcham.
- 0.4 x SAO1 Complaints and Policy Officer – Caroline Norrington.
- 1 x SAO1 Chief Investigation Officer – Allan Borg.
- 1 x AO7 Investigation Officer – Adrian Buck.
- 0.8 x AO6 Administration and Policy Support – Helmy Bakermans.
- 1 x AO4 Investigation Support Officer – James O'Brien.
- 0.25 x AO6 Office Manager (shared with the Office of the Anti-Discrimination Commissioner) – Somsong Albert.

### 1.2 Office expenditure

Total direct expenditure by the joint Office (Information and Public Interest Disclosures) in 2010-11 on employee expenses and the purchase of goods and services was \$917,000.



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 2010-11 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 Office of the Commissioner, Information and Public Interest Disclosures is independent in its decision-making functions but is supported by the Department of Justice for financial and personnel matters. Together with the Anti-Discrimination Commission, the Children's Commissioner and the Health and Community Services Complaints Commission, it is located within the departmental structure under the Court Support and Independent Offices division.

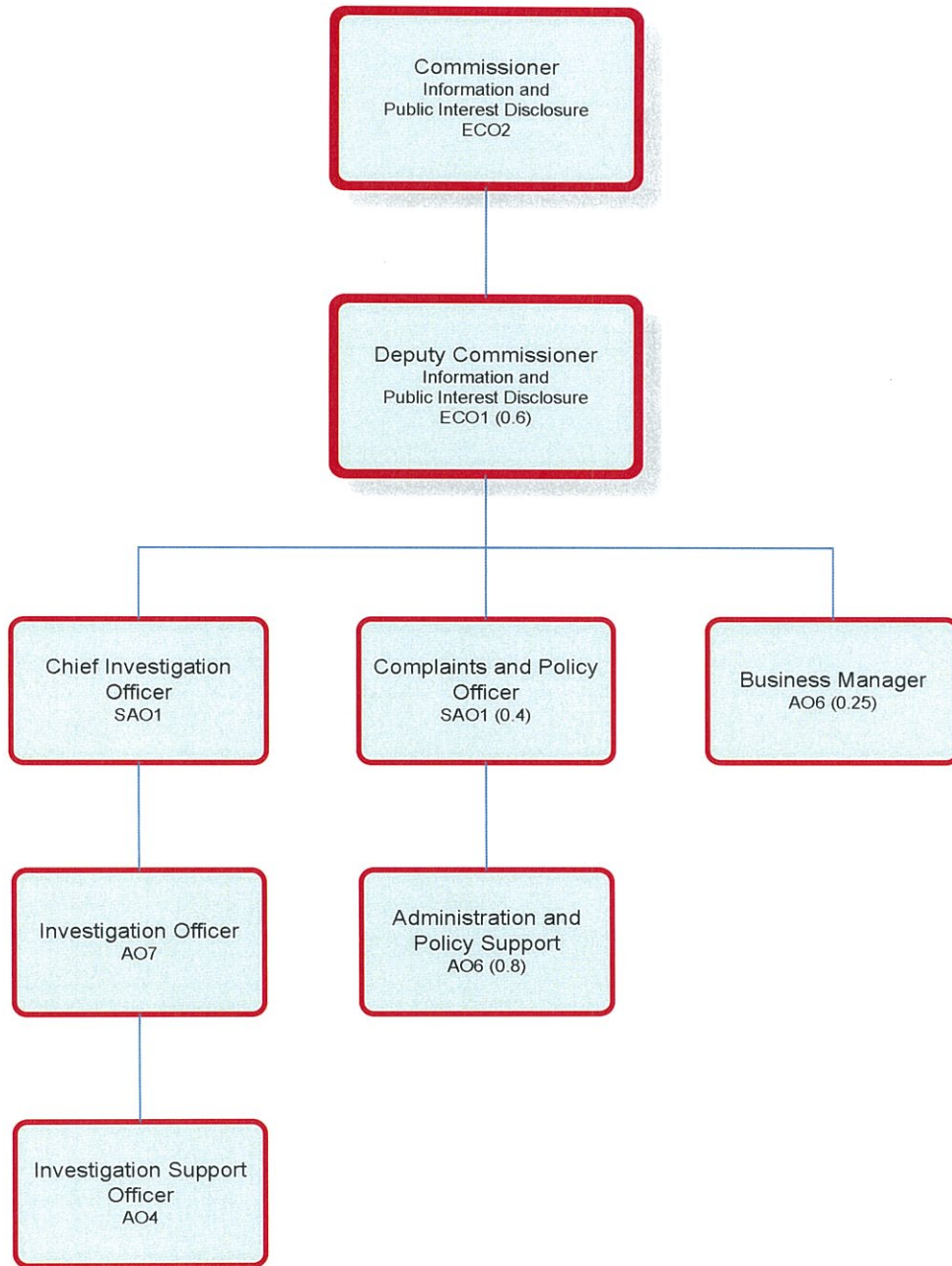
The Office complies with several public sector reporting requirements throughout the year. These include regular updates to departmental and divisional Business Plans, Annual Report, Risk Assessment Plans and Performance Measures Reporting.



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

# Office of Commissioner

## Information and Public Interest Disclosure





## 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 and local councils. Improper conduct includes matters such as seeking or accepting bribes, fraud, theft and behaviour that causes a substantial risk to public health and safety, to the environment or to the proper administration of public bodies.

The Commissioner decides whether a 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. There is legislative discretion not to investigate a matter that contains misleading information, is trivial or has already been investigated. Some matters can also be referred to other appropriate bodies for investigation.

The Commissioner has significant investigative 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 inclusion of section 53A** which enables a person to breach the confidentiality provisions of the Act 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 section 53B** 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. Since this amendment, almost all witnesses called to give evidence during an investigation have been served with a s53B notice. It is of particular assistance to public officers who are uncomfortable about not telling their superiors that they are assisting us with our enquiries.
- **The inclusion of a clear delegation power (section 54A)** 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 is responsible for disclosures of improper conduct made under the Act including:

- Assessing public interest disclosure complaints to decide whether or not they should be investigated.
- Providing support and legislative protections to disclosers.
- Investigating 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. (Note: Memoranda of Understanding have been signed with the Northern Territory Police Commissioner and the NT Ombudsman to facilitate the sharing of information as required.)<sup>1</sup>

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<sup>1</sup> three disclosures have been referred – see section 2.5.4

- Reporting to public bodies and to the discloser regarding the outcome of an investigation and any recommendations for change<sup>2</sup>.
- 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.<sup>3</sup>
- Preparing and publishing guidelines to assist individuals and public bodies in interpreting and complying with the Act.<sup>4</sup>
- Collating and publishing statistics about public interest 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 public interest disclosures received by this Office are subjected to a rigorous initial assessment. At the completion of this process, a decision is made about the proposed course of action to be adopted. On occasion, matters are referred to another body for investigation

For the purpose of performance reporting, all allegations containing 'public interest information' that require assessment are classified as 'public interest disclosures' –including those that are ultimately assessed as not falling within that category. 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.*

Budget Paper No 3 (BP3) set Performance Measures for the Office for 2010-11 relating to quantity, quality and timeliness. The summary below provides information about the revision of earlier estimates and details the performance of this Office over the reporting period.

### 2.4.1 Quantity – Public Interest Disclosures received

#### *Revised performance measure*

Accurately estimating the number of disclosure complaints we are likely to receive has so far been a challenge. We have no control over the number of complaints that come through our door and it is only now that we can more confidently predict emerging patterns. When this office was established in mid 2009, it was estimated that we would receive 10 public interest disclosures for 2009-10. It soon became clear that we would far exceed this number and the BP3 estimate was increased to 100. Ultimately, 78 disclosures were received in 2009-10 and 75 during the current reporting period.

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<sup>2</sup> six reports have been made to public bodies this reporting period – see section 2.5.6

<sup>3</sup> no reports to the Minister have been made pursuant to s32 of the Act.

<sup>4</sup> the Commissioner's Guidelines are published on the website at [www.blowthewhistle.nt.gov.au](http://www.blowthewhistle.nt.gov.au)



Although the BP3 estimate for 2011-12 is currently set at 60, it may need to be adjusted upwards if the current number of disclosures continues. .

Performance Measure	Current Year		Targets	Previous Year
	2010-11 Estimate	2010-11 Actual	2011-12 Estimate	2009-10 Actual
Public interest disclosures	100	75	60	78

### **Performance outcome for 2010-11**

The 75 disclosures handled during the reporting period included 41 new complaints. The remaining 34 partly investigated disclosures were carried over from the previous year. Public interest in the 'whistleblower' functions appears to remain strong.

Quantity	September 2010 1 <sup>st</sup> Qtr	December 2010 2 <sup>nd</sup> Qtr	March 2011 3 <sup>rd</sup> Qtr	June 2011 4 <sup>th</sup> Qtr	As at 30/06/11
Public Interest Disclosures	38*	11	13	13	75

\* This figure is comprised of 34 partly investigated disclosures carried over from 2009-10 and four new disclosures received in the quarter ending September 2010.

It is vital in an office investigating serious improper conduct that high standards of investigation and reporting are maintained and are not compromised. To cope with the unanticipated workload, the Office has employed a second investigator and also engaged several consultants to assist with specific investigations. Despite these measures the consistently high number of complaints, including some particularly complex ones, has impacted on our performance in terms of timeliness.

## **2.4.2 Timeliness – Public Interest Disclosures resolved or reported**

### **Revision of performance measure**

The current performance measure for 'timeliness' requires 30% of disclosures to be resolved, or investigation reports to be presented to the responsible authority, within a six-month time frame. This is not an admirable target but at the time it was considered to be achievable. Our ultimate aim is to resolve 80% of matters within a six-month timeframe. This will bring us closer to the targets set for similar bodies interstate.

### **Performance outcome for 2010-11**

51% of the disclosures resolved during this reporting period were dealt with within a six-month timeframe. Whilst it is fair to say that the majority of those 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		10-11 Estimate	10-11 Actual	11-12 Estimate
<b>Timeliness</b>	Disclosures resolved or investigation reports presented to the responsible authority within six months	30%	51%	30%

### 2.4.3 Timeliness – reports to Minister under section 32 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. The reason is that public bodies have responded to the recommendations made by the Commissioner and the making of a public report has not been necessary-nor is it an available option in these circumstances.

### 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

An important objective during the 2010/2011 reporting year was the education of disclosers, public officers and public bodies regarding their rights and obligations under the Act. These objectives were achieved through the following:

- Public education and training strategies involving formal training tailored to the needs of each audience. The Office conducted 24 face-to-face training sessions in 2010-11 in Darwin, Nhulunbuy, and Alice Springs, with a total of 297 participants. The sessions have been well received.



- The management of an informative website including user friendly training modules at [www.blowthewhistle.nt.gov.au](http://www.blowthewhistle.nt.gov.au) 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. A total 261 separate training modules were successfully completed on the website over the reporting period.

Feedback from participants in the tailored face-to-face sessions was very positive. On-line training through the website has also been well received. It will be an important part of our work over the next year to continue to raise awareness through similar targeted strategies.

- A promotional campaign was conducted in May 2011 through the distribution of materials promoting the functions of this Office to remote and regional police stations and health clinics, public libraries, legal aid organisations and other bodies who routinely provide services to the public. The assistance of the Northern Territory Police, and the Department of Health with pamphlet distribution was appreciated.
- Informal advice provided by this Office daily via freecall 1800 250 918. When possible, matters that did not fall within the jurisdiction of this office were referred to an appropriate authority or avenue.

Performance Measures		2010-2011 Estimate	2010-2011 Actual	2011-2012 Estimate
<b>Quantity</b>	Awareness and training Face-to-face Presentations	10	26	10
	Number of participants	100	297	100
	Online Training modules	N/A	261	N/A
<b>Quality</b>	Participant satisfaction	90%	90%	90%

The demand for presentations and training was greater than expected during the reporting period. The requests came from a number of public bodies including government departments, local councils and unions. Although conducting investigations in a timely manner must remain our first priority, the more people know and understand our functions and methods and the requirements of the Act, the better. As much as our current resources will allow, we will continue to respond to these training and awareness needs.

## 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

During 2010-11, this Office handled 75 disclosure complaints. Of these, 41 were new disclosures. Two of those matters were referred to the Commissioner by responsible Chief Executives (who are required to refer any Public Interest Disclosure made to them within 14 days.)

The disclosures received related to a wide variety of allegations of improper conduct. Most allegations were about one specific act of improper conduct. A few however involved several different alleged acts of improper conduct and in others, several public officers were allegedly involved.

Over 95% of the disclosures related to alleged incidents either ongoing or occurring less than 12 months prior to the disclosure being made.

### Improper Conduct

'Improper conduct' under the Act can be defined as 'serious misconduct'. It includes conduct which would constitute a criminal offence or provide reasonable grounds for terminating the employment of the public officer because they are:

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

'Improper conduct' also includes:

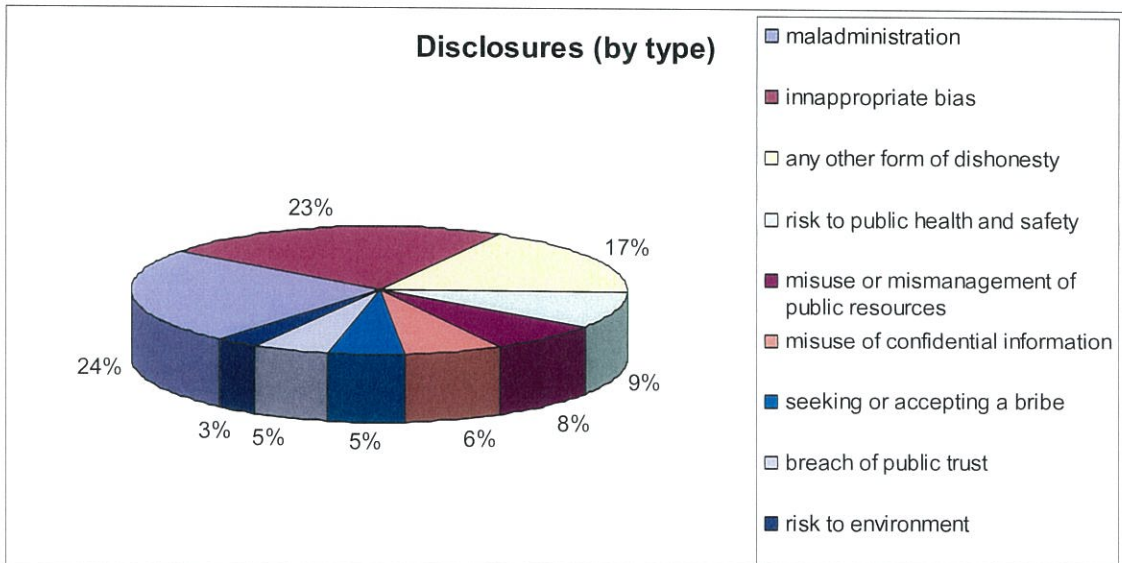
- substantial misuse or mismanagement of public resources
- substantial risk to public health or safety
- substantial risk to the environment
- substantial maladministration that specifically, substantially and adversely affects someone's interests

whether or not the conduct constitutes a criminal offence or would provide reasonable grounds for terminating the services of the public officer. A 'substantial' risk or misuse means it must be 'significant or considerable'.

Finally, 'improper conduct' includes an act of reprisal (e.g. sacking a whistleblower because of their disclosure) or a conspiracy or attempt to engage in improper conduct that constitutes a criminal offence.

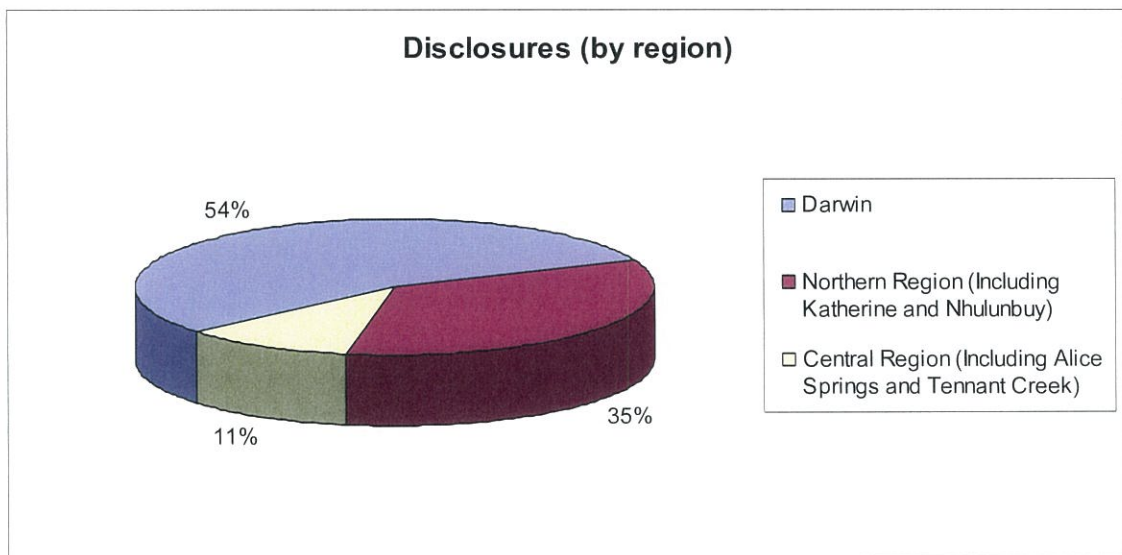
Of the disclosures received during the reporting period, the principal allegations of improper conduct were as follows:





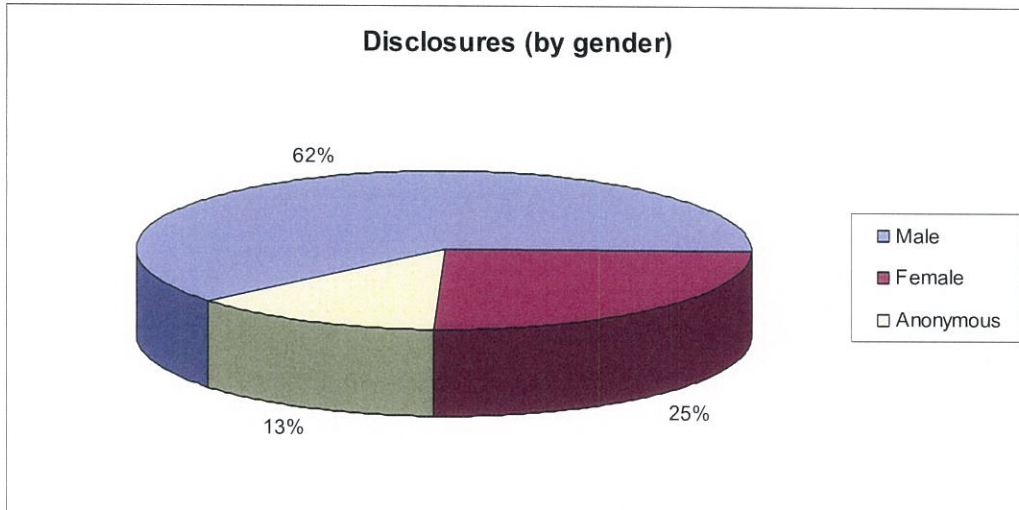
### Where are the allegations coming from?

Allegations of improper conduct were received from both public officers and the general public. As expected, more allegations were received about public bodies/officers in the Darwin region. We attribute this to the higher number of public bodies and government departments located in Darwin and a greater knowledge of the existence of our Office. With regard to the rural areas, more complaints were directed towards public bodies/officers in the Top End rather than the Centre.



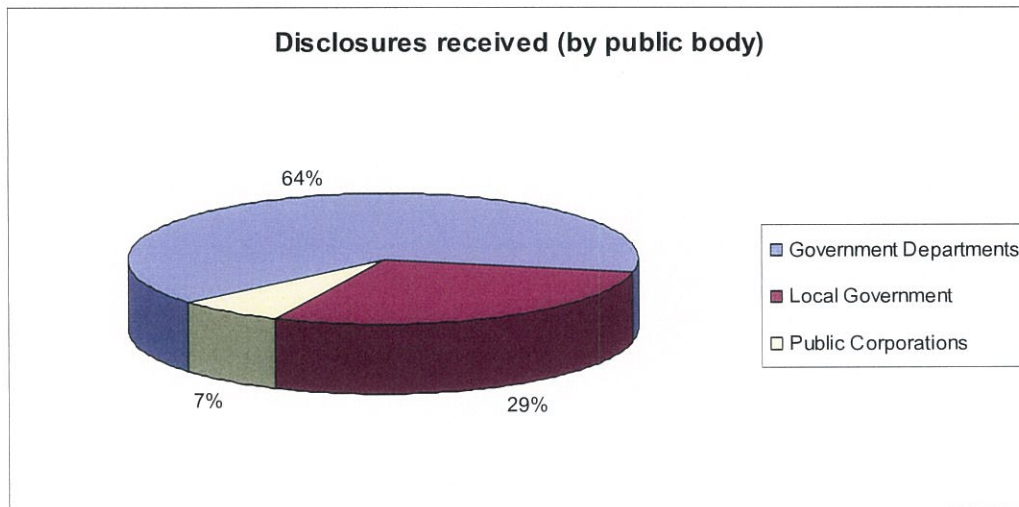
Of the total number of disclosures handled during the reporting period, 60% were made by males, 25% by females, and 15% were anonymous complaints. Although initial enquiries are often made anonymously, most disclosers ultimately elect to identify themselves. It is interesting to note that none of the complaints from disclosers who remained anonymous proceeded to a full investigation. This was often due to difficulties in obtaining sufficient information to satisfy the Commissioner that the complaint involved public interest information that must be investigated.





**Who are the allegations being made about?**

The diagram below provides a breakdown of the public bodies about which public interest disclosures were made. Government departments include NT Police, the Departments of Health, Education and Training. Public Corporations include those companies which are wholly owned by the NT Government, such as the Territory Insurance Office, Darwin Port Corporation, and Power-Water. Local Government includes all City, Town, Shire and Community Councils.



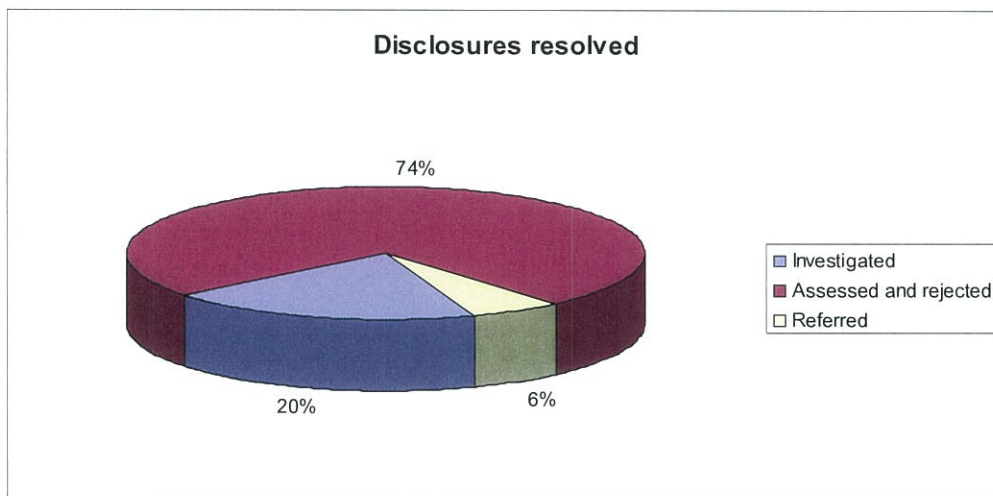
**2.5.2 Public interest disclosures referred by the Speaker**

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 2010-2011 reporting period, the Commissioner received no public interest disclosures from the Speaker of the Legislative Assembly.

### 2.5.3 Number of public interest disclosures resolved

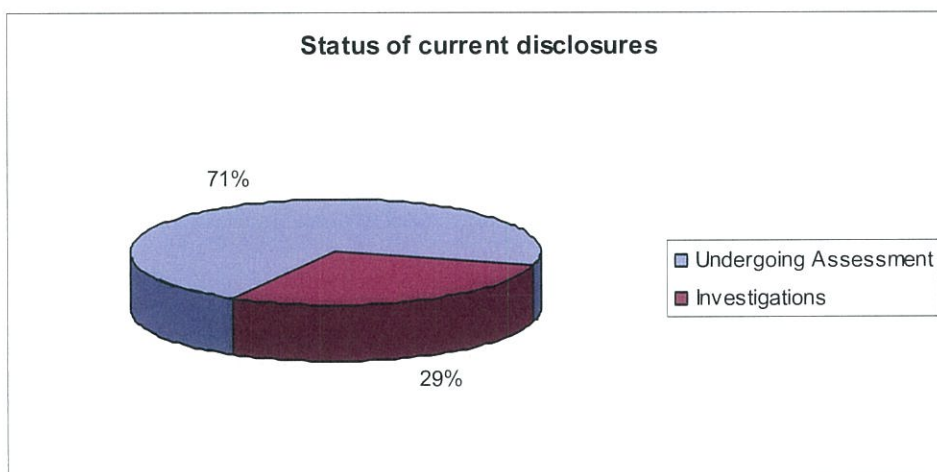
Of the total 51 disclosures files resolved during the reporting period:

- 38 were assessed and ultimately rejected by the Commissioner on the grounds that they were not matters attracting the protections of the Act;
- 10 disclosures were accepted as public interest disclosures attracting the protections of the Act and were investigated and completed;
- 3 were assessed and referred to another body for investigation.



Of the remaining 24 disclosures files current as at 30 June 2011:

- 17 are undergoing detailed assessment before a decision being made regarding their status; and
- 7 have been accepted as Public Interest Disclosures and are still undergoing investigation.



## 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:

- one matter to the Auditor-General;
- one matter to the Commissioner for Public Employment; and
- one matter to the Police.

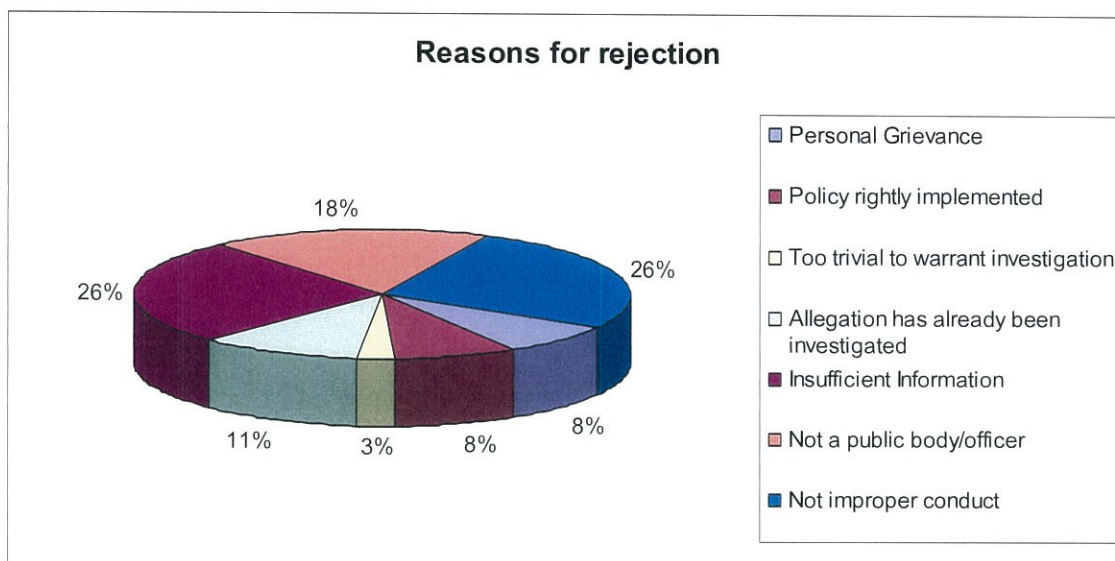
Allegations received at the preliminary stage that were not determined to be public interest disclosures but were still considered important enough to require investigation, were often referred to the Chief Executive of the public body in question or another appropriate body for investigation. This step is only taken with the discloser's consent. In such circumstances, this office liaises with the discloser and the Chief Executive, or the appropriate investigating authority, to facilitate the referral of the complaint.

## 2.5.5 Public interest disclosures not investigated

The assessment stage of any complaint is an important one. Some disclosure complaints can be quickly dealt with if, for example, they clearly fall outside the jurisdiction of the Office. Many others however take considerable work before a decision can be made as to whether or not they should be investigated. Of the 38 disclosures ultimately rejected by the Commissioner:

- 26% were assessed as not involving improper conduct as defined by the Act;
- 26% were unable to be assessed due to insufficient information being provided or obtainable;
- 18% were outside the jurisdiction of this Office as the alleged improper conduct did not concern a public officer or public body;
- 11% had already been adequately investigated;
- 8% were assessed as personal or employment related grievances;
- 8% were assessed as allegations about policy decisions of a public body or public officer that they were entitled to make;
- 3% were too trivial to warrant investigation.





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

After completing an investigation, the Commissioner must report the findings to each responsible authority for the public body or public officer to whom the investigation relates; and may (except in the case of a referred MLA investigation) make recommendations for action to be taken as a result of the findings. Six such reports were made in the reporting period however this number is expected to rise in the 2011-12 reporting period as more investigations are completed. Details of the six reports are presented below. They have been de-identified.

#### Report 1

A disclosure was made to the Commissioner by a former employee of a public body about the activities of a number of senior managers in that body. The information provided included allegations of inappropriate bias in the awarding of service contracts, misuse of the public body's property and equipment, failure to adhere to regulatory requirements and theft.

An investigation found that whilst poor practice was widespread within the organisation, no criminal activity had taken place. As such, recommendations for improvements to policy and process were made and implemented. Training for the public officers within the organisation has also been improved to educate against similar incidents occurring in the future.

#### Report 2

A disclosure was made to the Commissioner by a former employee of a public body about the body's refusal to provide a safe workplace in a remote community. It was alleged that unstable asbestos was present in the workplace and the public body did not take steps to address the danger to both staff and members of the public using the facility. It was also alleged that the public body deliberately targeted the employee as a

'troublemaker' and placed him on an unofficial 'blacklist, preventing his re-employment.

An investigation found that the public body had in fact responded to the asbestos concerns by examining and testing material found and by putting in place a management plan for the asbestos. Further to this, the Federal Government, as part of the Northern Territory National Emergency Response, has commissioned testing in all of the 73 indigenous communities as to the dangers of unstable asbestos, and has committed to remove all unstable asbestos through a planned removal process.

The allegation of 'blacklisting' employees was denied by the public body, and correspondence viewed by the Commissioner showed that the discloser was not re-employed at the end of his contract as a result of a properly adopted Government policy. What was apparent however was that the public body did not have a clear policy about how to manage employees deemed not to be suitable for employment. A new policy, which affords employees natural justice and the right of review in relation to their employment was established and implemented. This policy and the database of unsuitable employees is now linked to the recruitment process, making for a much improved employment process.

### **Report 3**

A disclosure was made to the Commissioner by a current employee of a public body about the activities of a number of senior public officers within that body. The allegations centred on events which had occurred some years earlier, and the information provided included allegations of criminal activity including serious breaches of the *Criminal Code*, perverting the course of justice and assault. Many of the public officers named were still employed in various public bodies.

An investigation was commenced and certain files were requested from the relevant Chief Executive. The requested files, including an earlier investigation file which had been registered with TRIM, could not be found and the Commissioner was obliged to re-investigate. Months into the investigation, the missing files were located. It appears they had been misfiled, and upon examination, proved that the criminal activity alleged had been properly investigated. The Commissioner used powers found in section 21 of the Act to discontinue her investigation. In the report to the Chief Executive, however, a recommendation was made to obtain an independent review of the current records management system for the public body to identify whether the system complies with the provisions of *The Information Act* and the *Records Management Standards*. Further to this, if deficiencies were identified in the records management system, short, medium and long term strategies are required to be developed with the ultimate aim of full compliance with the legislation.

The Commissioner is still monitoring the public body as to its efforts to become compliant with the *Information Act* and the *Records Management Standards*.



## **Report 4**

A disclosure was made to the Commissioner by a current employee of a public body about a series of incidents involving criminal activity and poor management and practice within an institution run by the public body. The allegations covered a period of 5 years and were very vague in parts. Initial assessment prompted the Commissioner to focus on one allegation of the cover up of a serious assault which had occurred between a public officer and a member of the public and a complaint that a witness had been pressured by a public officer to create a false statement about the incident.

An investigation found that the incident in question had been properly investigated by Police and that charges of assault had been pursued against the public officer involved. Interviews were conducted with witnesses to both the incident and the Police investigation, and it was ascertained that there had not been an attempt to 'cover up' the assault, nor had there been an attempt to pervert the course of justice by creating a false statement about the matter.

## **Report 5**

A disclosure was made to the Commissioner by a member of the public that a public officer was using his position to steal property belonging to the public body, and that he was altering records to cover up the thefts. It was also alleged that the public officer had demonstrated inappropriate bias and misused confidential information whilst holding a position on an industry Board.

An investigation was commenced into the allegations however it was faced with serious problems from the start. The subject matter of the alleged theft had been poorly recorded and maintained over many years, and persons interviewed all had differing views as to the amounts and the value of the property. Assistance was sought from the Auditor General who conducted an audit of the property in question, and anecdotal evidence indicated that over a long period some items of property had been destroyed whilst others had been gifted to various organisations in the Northern Territory. These details had not been adequately noted in departmental records.

During the investigation, documents were provided by the public body that satisfied the Commissioner that a full investigation had been carried out by the public body and later reviewed by the NT Ombudsman. This investigation cleared the public officer of wrong doing. Contained in the investigation report however was a recommendation to the public body that it clarify and report as to the gifting of the property, to once and for all resolve confusion as to its ownership. This had not been done and the Commissioner recommended that the public body prioritised resolving any outstanding dispute between the public body and outside organisations as to the ownership of the property in question, and to notify formally all stakeholders of the ownership status so as to minimize further public confusion over the matter.

In relation to the second allegation of inappropriate bias and misuse of confidential information, the investigation found that whilst the allegations may have had some substance at an earlier date, the public officer had

removed himself from holding a position on an industry Board and was no longer in a position to influence policy in relation to the Board or the public body. The public body did not have clear 'Conflict of Interest' guidelines for public officers, and the Commissioner recommended that the Chief Executive revisits the issue of Conflict so that public officers and members of the public can be assured that public officers act on behalf of all members of the community in a fair and equitable way.

## Report 6

A disclosure was made to the Commissioner by two current employees of a remote public body claiming that their supervisor had been engaging in improper conduct by demanding money from other employees and then issuing threats of physical harm and damage to property to anyone who reported the matters to senior management.

This complaint was taken seriously by the public body and they arranged for the immediate removal of three staff from the community. They also co-operated with a Police investigation, and then conducted a thorough internal investigation before referring the matter to an industry Board. The complaint to this Office essentially revolved around a concern that the public body was 'protecting' their senior representative. The Commissioner elected to give the public body time to complete its own investigations and reviewed the findings made.

The Commissioner found that the public body had managed this sensitive situation in a positive and supportive way. The disclosers were immediately assisted in lodging 'Workers Compensation' claims, were offered other positions within the public body, and were provided with support in the form of counselling and extended leave whilst the matter was being investigated. The Commissioner did not recommend any further action be taken by the public body and the matter was closed.



## **2.5.7 Reports under section 32(2) of the Act**

The Commissioner may report on the investigation, the recommendations and the response to the recommendations to the Minister if, after considering any information provided by a responsible authority, it appears to the Commissioner that insufficient steps have been taken within a reasonable time, to give effect to the recommendations for action made by the Commissioner. 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 Commissioner's Guidelines are published online at [www.blowthewhistle.nt.gov.au](http://www.blowthewhistle.nt.gov.au)

The Guidelines are updated from time to time as required.



## 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 freedom of information (FOI), privacy protection and records management provisions of the *Information Act* (the Act). The main objects of the Act relating to aspects of government information management are:

- FOI - to provide members of the public with access to government information, including personal information;
- Privacy protection - to protect the privacy of personal information held by public sector organisations;
- Correction - to permit members of the public to correct personal information if it is inaccurate, incomplete or out of date; and
- Records management - to promote efficient and accountable government through appropriate records and archives management by public sector organisations.

### 3.2 Review of the Act

The Department of Justice is currently conducting a major review of the *Information Act*. The Office has provided a staff member to assist the review and is also represented on the steering committee. The review is timely, given that legislative reforms have been enacted in a number of other Australian jurisdictions (particularly the Commonwealth, New South Wales, Queensland and Tasmania) to better promote 'open government' through more incentives for pro-active disclosure of government information. Under such reforms public sector organisations consider government information as a public resource that should be available to the public unless there is good reason otherwise. Licensing schemes such as AusGOAL appear to be widely supported throughout other Australian States as they protect the provider of the information by identifying and managing legal risks associated with making information available for re-use.

Whether such reforms are appropriate for the Territory will be important matters to consider as part of the review, and the Office looks forward to working closely with the Department of Justice on these important reforms.

### 3.3 Legislative reform

During the reporting period, a number of amendments were made to the Act. Section 71, which permitted organisations to use or disclose personal information for the purpose of research or the compilation of statistics, was not clear and it was repealed. The section was replaced with an amendment to the Information Privacy Principles (IPPs), namely IPP 2.



IPP 2.1(ca) was inserted to permit a public sector organisation to use or disclose personal information about an individual for a secondary purpose (other than the primary purpose for which it was collected) if it is necessary for research, or the compilation or analysis of statistics, in the public interest. The following conditions apply:

- (i) the research, compilation or analysis will not be published in a form that identifies the individual;
- (ii) it is impracticable for the organisation to seek the individual's consent before the use or disclosure;
- (iii) in the case of disclosure – the organisation reasonably believes the recipient of the information will not disclose the information;
- (iv) if the information is health information – the use or disclosure is in accordance with guidelines issued by the Commissioner under section 86(1)(a)(iv) for this paragraph;

This amendment was based on IPP 2.1(c) of the *Victorian Information Privacy Act 2000*. Section 86 was also amended to permit the Commissioner to develop and issue guidelines about the use and disclosure of health information. A guideline has been issued on this topic (see section 6.5).

A second amendment was made to IPP 2 following the release of the report of the Board of Inquiry into the Child Protection System in the Northern Territory. IPP 2.1(d)(i) now permits the use or disclosure of personal information by an organisation for a secondary purpose if the organisation reasonably believes it is necessary to lessen or prevent a serious or imminent threat of harm to, or exploitation of, a child. The purpose of the amendment was to remove the requirement for a serious and imminent threat, a test that was considered too restrictive to properly protect child safety and wellbeing.

An amendment to section 81 of the Act permits the Commissioner to authorise the collection, use or disclosure of information in two circumstances:

- if satisfied that the public interest substantially outweighs any interference with privacy; or
- if satisfied that the benefit to persons collecting, using or disclosing the information outweighs the interference with the privacy of others.

The amendment introduced an alternative between public interest and benefit to a person by replacing the 'and' with an 'or'.

### 3.4 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.

### 3.5 Performance measures

The performance measures for the Office, set out in Budget Paper No 3, relate to quantity, quality and timeliness. The measures remain the same as the previous year.

#### 3.5.1 Quantity – complaints and applications

Performance Measures		10-11 Estimate	10-11 Actual	11-12 Estimate
<b>Quantity</b>	Complaints & applications dealt with by the OIC			
	-FOI	25	22	25
	-Privacy	10	10	10

Full details of FOI complaints handled by this Office are reported in Part 4 and Appendix 2 of this report.

#### 3.5.2 Timeliness – resolving complaints within 12 months

Performance Measures		10-11 Estimate	10-11 Actual	11-12 Estimate
<b>Timeliness</b>	Complaints finalised within 12 months			
	-FOI	50%	38%	50%
	-Privacy	70%	50%	70%

The reasons for delays in finalising FOI complaints include:

- Parties requesting additional time to reach an agreement by consent;
- Organisations unable to provide the information which the Office requested in a timely manner;
- Complaints being on hold while waiting for the resolution of a court case;
- Complaints involving a very large number of documents.

Although some delays are justifiable, the management of complaints would be improved if the Commissioner had better case management options under the Act, including the ability to penalise blatant breaches of timelines.

### 3.5.3 Quantity – training and awareness

Performance Measures		10-11 Estimate	10-11 Actual	11-12 Estimate
<b>Quantity</b>	Awareness and training presentations	20	20	20
	Number of participants	200	315	250

The statistics include the training conducted by FOI expert Megan Carter, Director of Information Consultants Pty Ltd, as this Office coordinates and supports her FOI training sessions. Full details of training provided can be found in section 6.4 of this report.

### 3.5.4 Quality – stakeholder satisfaction

Performance Measures		10-11 Estimate	10-11 Actual	11-12 Estimate
<b>Quality</b>	Stakeholder satisfaction with performance	80%	86%	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.

## 3.6 Reporting requirements under section 98 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.



### 3.6.1 The right to access information

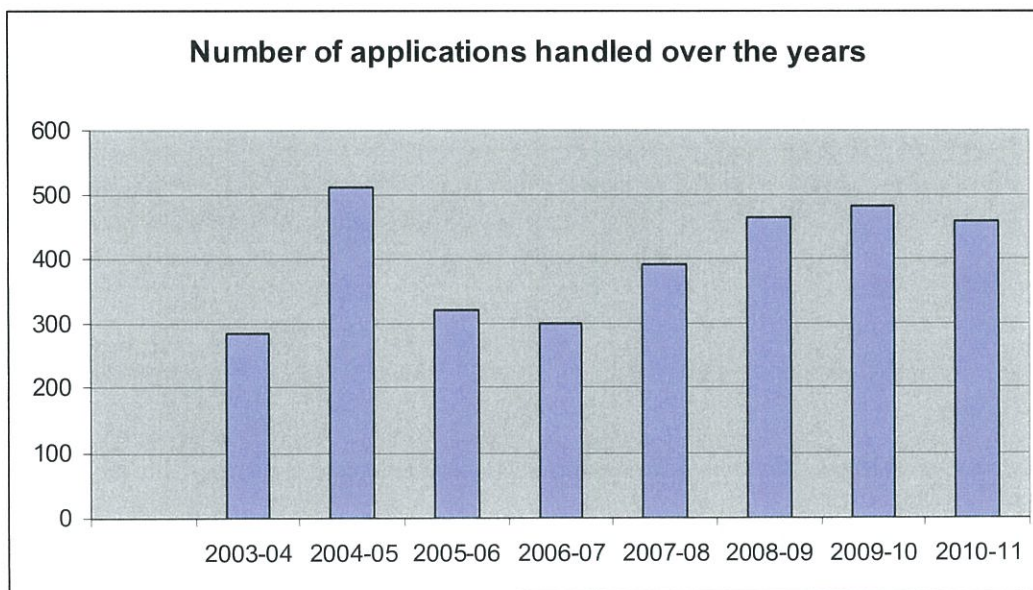
The *Information Act* gives members of the public the right to access information held by Northern Territory public sector organisations. People must be given access to records containing the information they apply for unless disclosure would be against the public interest. FOI also gives people the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

FOI application forms are available from the organisation that holds the information, their website or from our website <http://www.foi.gov.au>. This Office's website also holds information about how to make an application and where to send it.

Before an organisation can accept an application, it must be satisfied about the identity of the applicant. Within 30 days of acceptance, the organisation must 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 for reasons set out in the Act and the organisation must provide its reasons for non-disclosure.

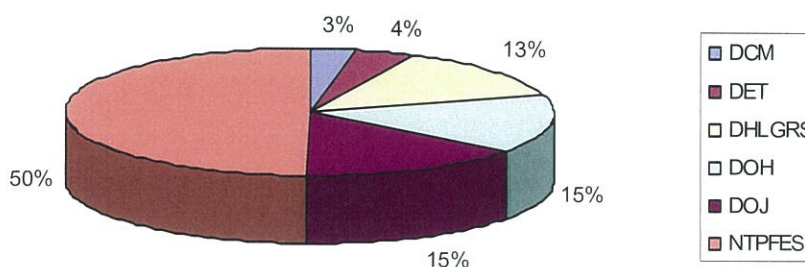
### 3.6.2 Applications handled

Public sector organisations handled a total of 459 FOI applications during the year which is slightly fewer than in the previous 12 months. The total number of applications handled by organisations in the past few years has remained fairly constant.



The Northern Territory Police, Fire and Emergency Services (“the Police”) handled 195 applications – over three times as many as any other organisation. The Departments of Justice and Health handled similar numbers (50-60 applications).

### Overview of FOI access applications handled



It is interesting to note that these six public sector organisations processed 392 of the 459 requests or 85% of all FOI applications. The other 21 organisations processed the remaining 67 applications. See Appendix 2 for full statistical information.

#### 3.6.3 Applications not accepted

The number of applications not accepted by public sector organisations was slightly higher this year with 38 applications refused in comparison with 24 in the previous year. The reasons for non-acceptance are numerous and included:

- applicants failing to provide the \$30 application fee;
- applicants failing to provide adequate documentation to satisfy identity requirements; and
- applicants seeking information that is outside the scope of the Act.

#### 3.6.4 Applications withdrawn

During the reporting period, 12 applications to organisations were lodged and later withdrawn by the applicant in comparison with 21 withdrawn applications in 2009-10. It is hard to explain the decrease. It may result from a greater public understanding of the system and what it can and cannot achieve. Reasons for an application being withdrawn may include:

- the estimated processing fee was too high;
- the information was no longer relevant to the applicant; or
- the applicant lost interest.

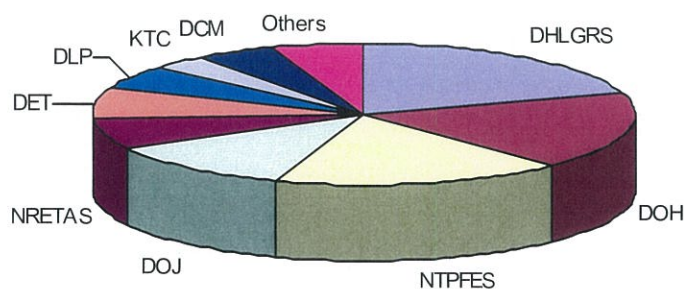
#### 3.6.5 Amount of information released

This year approximately 30,000 pages of information were released in full as a result of applications to access information made under the *Information Act*. In one sense, every page of information released is positive in that it contributes to greater public access to government information, which contributes to public understanding of government and participatory democracy. The organisations that released the most



information under the *Information Act* were the Department of Housing, Local Government and Regional Services, the Department of Health, the Police, and the Department of Justice. The following chart shows the extent to which different organisations contributed to the volume of information released to the public.

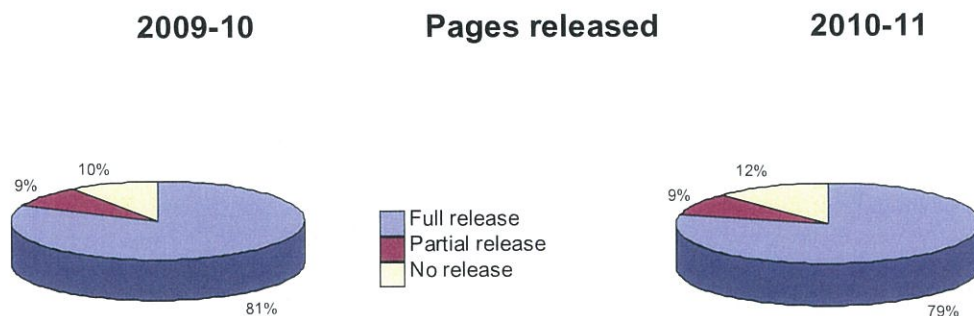
### Amount of information released 2010-11



See Appendix 2 for full statistical information.

It should be noted that this chart does not represent the total amount of information released to the public in the 2010-11 period, it only represents information released through the *Information Act* process. If an organisation publishes or creates simpler processes for accessing key information, it may not be necessary for people to make an application to access the information under the *Information Act*, and so less information is recorded as being released under the *Information Act*. Caution should therefore be used when attempting to use these statistics to draw conclusions about the strength of an organisation's commitment to transparency.

30,000 pages is a significant drop from the previous year, when approximately 50,000 pages were released. The drop reflects a reduced quantity of information requested rather than an unwillingness to release it, as a similar proportion of information was released in both years.



The proportion of information requested that was actually released varied significantly between organisations, although the Information Commissioner is pleased to see that most organisations released more than 90% of the information requested in full.



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.

The Department of Health and the Department of Education are large organisations that process large numbers of information access applications, and they released 98-99% of the pages located in response to applications. Both departments are to be congratulated for achieving such high rates of release and their pro-active commitment to freedom of information.

Organisations with fewer applications that have also released very high percentages of the information requested include the:

- Department of Resources (292 pages, 97%),
- Department of Business and Employment (310 pages, 97%),
- Darwin City Council (141 pages, 98%),
- Katherine Town Council (1049 pages, 97%),
- Northern Territory Electoral Commission (66 pages, 100%),
- Office of the Children's Commissioner (6 pages, 100%),
- Northern Territory Auditor-General's Office (130 pages, 100%),
- Tourism NT (1 page, 100%),
- Territory Insurance Office (8 pages, 100%), and
- Department of the Legislative Assembly (78 pages, 100%).

Organisations with significantly lower rates of release include the:

- NT Police (5241 pages, 54%),
- Department of Construction and Infrastructure (248 pages, 54%),
- Department of Natural Resources Environment the Arts and Sport (2114 pages, 69%),
- Department of Housing, Local Government and Regional Services (5930 pages, 82%), and
- Department of Justice (3424 pages, 84%).

There are numerous reasons why an organisation may have a lower rate of release, not all of which reflect a reluctance to release information. For example:

- The Department of Construction and Infrastructure contains Government Business Divisions, which are excluded from the Act with respect to non-personal information, and it is likely that a large number of pages were not released for this reason (particularly noting that their reasons for not releasing information were that the pages were 'not covered' by the Act).
- The Police and the Department of Justice (containing Correctional Services) are involved in law enforcement, which can make for more disgruntled and aggrieved applicants, as well

as a need to legitimately refuse information for security and intelligence reasons.

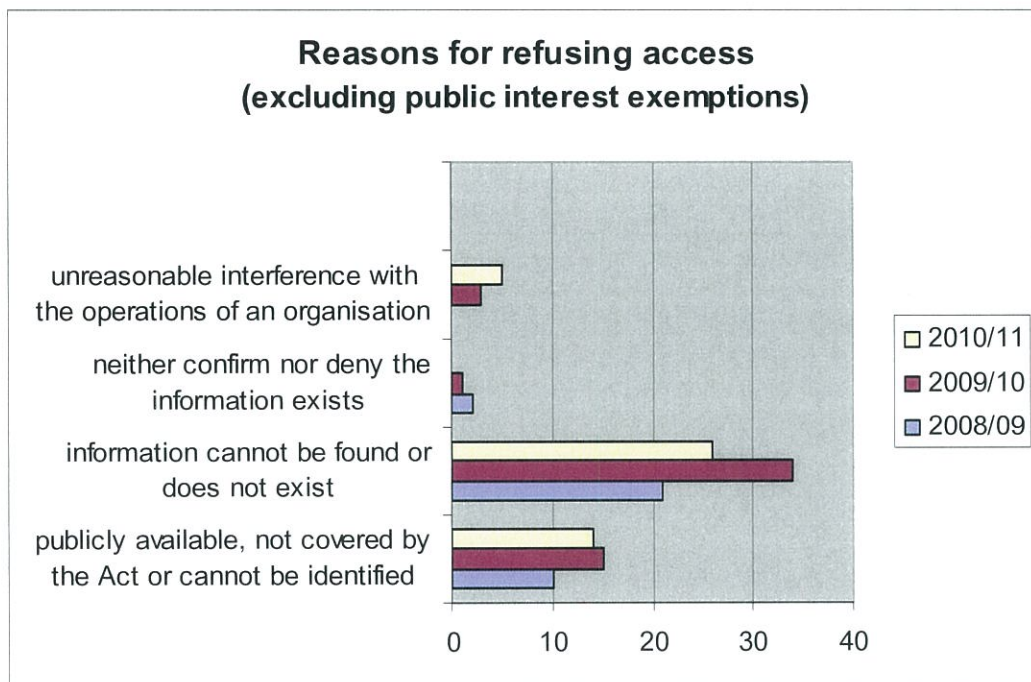
- Some organisations hold large quantities of commercially sensitive or personal information that certain individuals might want to see but which may not be in the public interest to disclose.

### 3.6.6 Reasons for refusing to release information

Although one of the primary objects of the Act is to create a general right of access to information held by public sector organisations, there are a number of reasons to legitimately refuse access.

Table 3 (in Appendix 2) shows the reasons organisations used for refusing to release information. Reasons for refusal include the efficient operation of government and the availability of the information or because the information is exempt under one of the public interest exemptions in Part 4 of the Act.

Reasons for refusing access other than the public interest exemptions are set out in the graph below:



Only one organisation, the Department of Justice, refused access to information because providing access would be an unreasonable interference with the operations of the organisation.

### 3.6.7 Public interest exemptions relied upon

The creation under the Act of a general right of access to information held by public sector organisations must always be balanced by the need to protect the public interest. The Act provides a number of public interest

exemptions that enable organisations to refuse access when it is appropriate to do so. Table 4 (in Appendix 2) shows the number of pages that public sector organisations released in part and the exemption relied upon.

The principal public interest exemptions relied upon during the reporting period are explained in more detail below.

### 3.6.8 Privacy exemption under section 56

Section 56(1)(a) provides that information is exempt under section 50 of the Act if the disclosure of that information would be an unreasonable interference with the person's privacy. Section 56(1)(a) continues to be relied upon more than any other exemption and 57% of the total 220 applications contained information that was deemed to be exempt on this ground. Information on 3,173 pages was not released because the organisation considered that the disclosure of the information would be an unreasonable interference with the privacy of another person. This exemption was used on 1,006 pages by the Department of Housing, Local Government and Regional Services, by Police on 945 pages and by the Department of Natural Resources, Environment, the Arts and Sport on 903 pages.



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.

### 3.6.9 Secrecy exemption under section 48

Information is exempt under section 48 of the Act if disclosure of the information to the applicant would be an offence under the provisions specified in Schedule 1. Last year the Department of Health and Families used section 48, the secrecy exemption, on 2,029 pages which is to be expected given it is the Department with responsibility for much information that is protected by the secrecy provisions, such as information relating to matters in the *Care and Protection of Children Act* and, occasionally, adoptions. However, this year the Department of Health only used this exemption on 29 pages. Numbers may fluctuate wildly because the number of applications or the information requested may vary from one year to the next. The secrecy exemption was not used by any other organisation.



### 3.6.10 Cabinet exemption under section 45

Information is exempt under section 45 if it is information relating to Territory Cabinet, the Executive Council or the economy. Information was refused on 870 pages under section 45 of the Act. The exemption for Cabinet documents was used 356 times by the Department of the Chief Minister, 233 times by the Department of Justice and 237 times by the Department of Housing, Local Government and Regional Services but hardly used by other agencies.

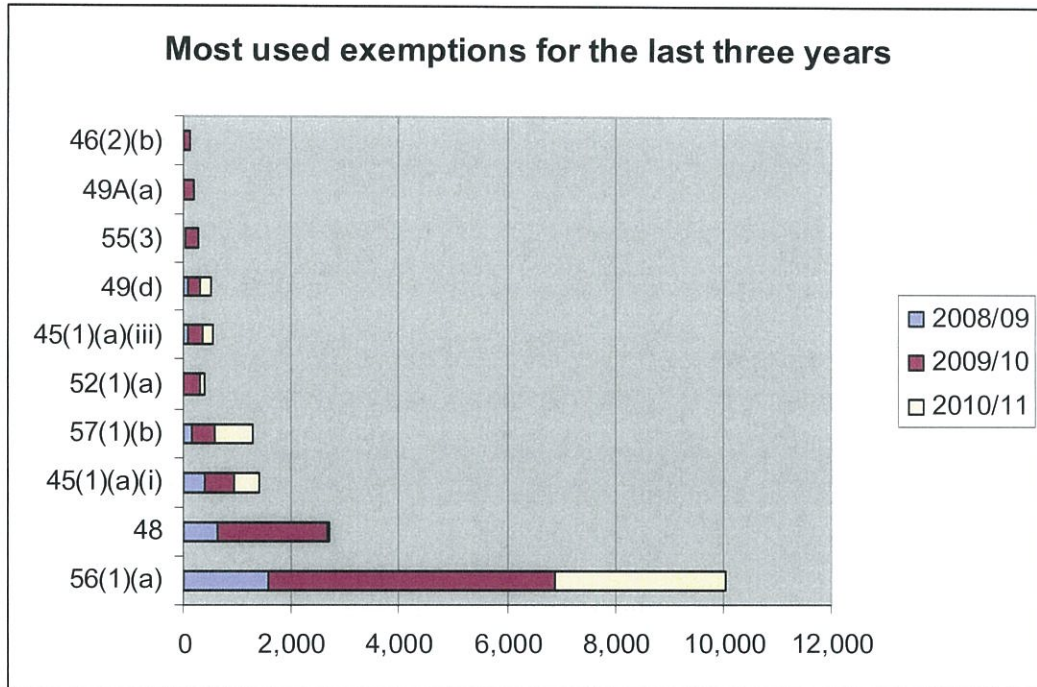
### 3.6.11 Business, commercial or financial exemption under section 57

Information is exempt from disclosure if it would reveal information of a business, commercial or financial nature. It is surprising that this exemption was used on 404 pages by the Police and on 303 pages by the Department of Justice but hardly at all by the other agencies, including those organisations that work in the area of business, commerce or finance.

#### Number of pages for the most used exemptions:

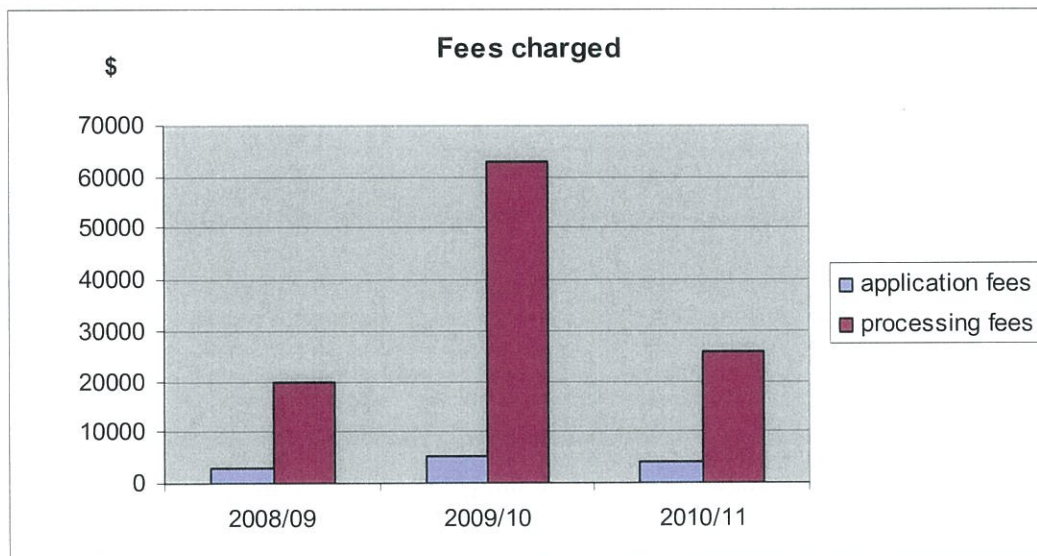
Section	Exemption provision	2008-09	2009-10	2010-11
56(1)(a)	Unreasonable interference with a person's privacy	1,577	5,314	3,173
48	Secrecy provisions	624	2,039	29
49C(a)	Complaint under the <i>Ombudsman Act</i>		1,773	
49C(b)(iii)	Conduct of Police complaints resolution process		1,634	
45(1)(a)(i)	Brought into existence for submission to an Executive body	390	551	472
57(1)(b)	Business, commercial or financial undertaking	146	438	722
52(1)(a)	Deliberative processes	10	314	52
45(1)(a)(iii)	Was considered by an Executive body	95	266	204
49(d)	Legal professional privilege	88	230	185
55(3)	Communicated in confidence	55	219	13
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	8	104	10

Table 4 in Appendix 2 has the details of all exemptions used. The most used exemptions are graphically illustrated for the last three years:



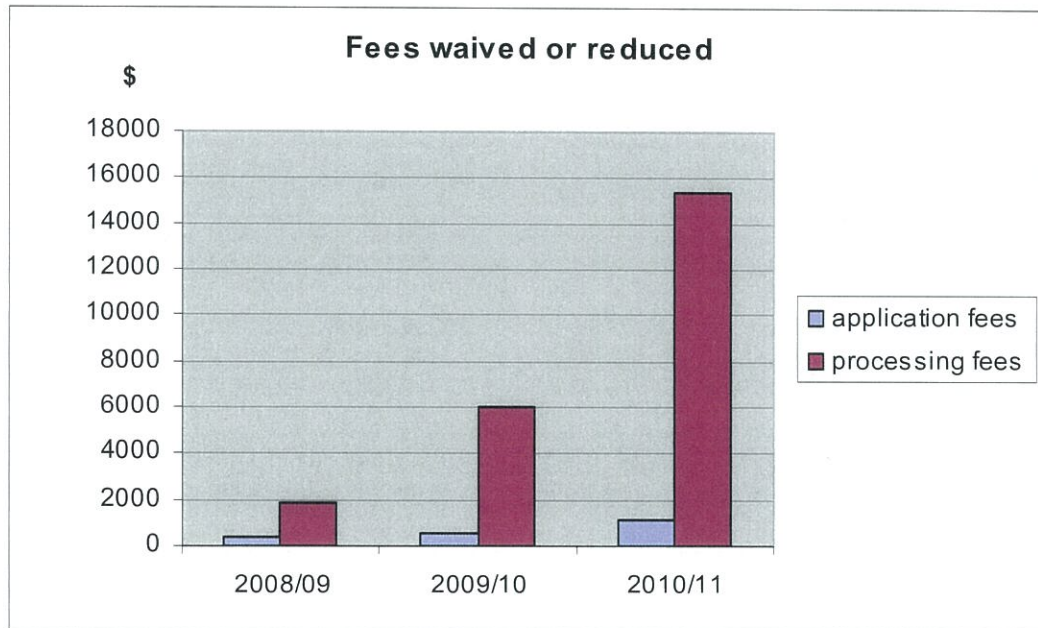
### 3.6.12 Application and processing fees

Organisations can charge for accepting and dealing with FOI applications in line with a fee structure set out in the Act and Regulations. They may also 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.



High processing fees charged during 2009-10 relate to a small number of exceedingly large applications to the Department of Health.





This graph indicates the amount of fees that were waived during the reporting period.

### 3.6.13 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 held by the organisation 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 they refuse 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 nine new requests for information to be corrected which compares with six applications for corrections in 2009-10 (see Table 7 in Appendix 2).

### 3.6.14 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 17 applications for an internal review during the reporting period – seven less than in the previous last year. There were 18 reviews conducted with nine remaining open at the end of the reporting period. Of those conducted, nine decisions were confirmed, two



were revoked and seven were varied. These statistics are very similar to those of the previous year. On nine occasions, the applicant achieved a better result through the review process.

Given the large number of applications handled by organisations, and the amount of information that is not disclosed, it is surprising that so few people seek a review of the original decision.

### **3.6.15 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. There were no exemption certificates issued this financial year.

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

## 4 FOI complaints to the Information Commissioner

### 4.1 Handling FOI complaints

The Office of the Information Commissioner may receive complaints from:

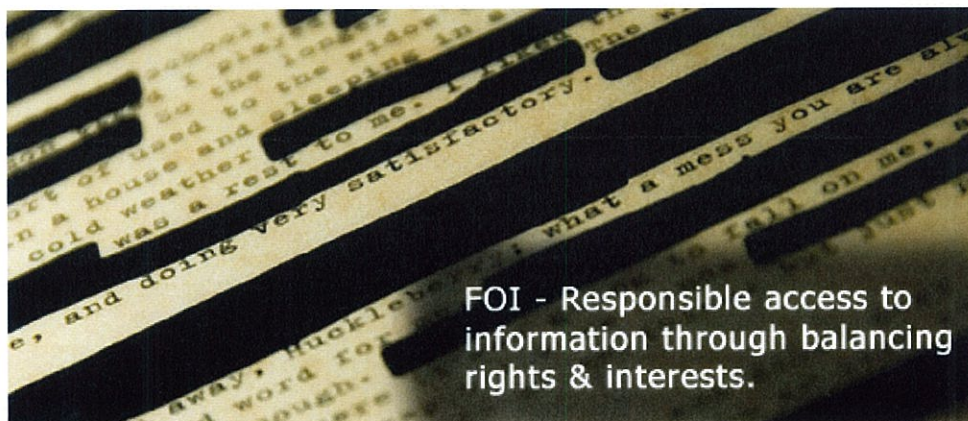
- an FOI applicant who objects to an internal review decision by a public sector organisation to refuse access, to refuse correction or to charge a fee;
- an applicant who is dissatisfied with the length of time taken by an organisation to process an application; or
- a third party who objects to an 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 are unable to resolve matters between themselves, the complainant may lodge a complaint with the Information Commissioner. The Information Commissioner must decide whether to accept or reject a complaint. If the Commissioner accepts a complaint, the Commissioner, or his or her delegate, must investigate the matter and decide whether there is sufficient prima facie evidence to substantiate the complaint. The decision is prepared as a prima facie decision.

If the Commissioner decides that there is sufficient evidence to substantiate the matter, it is referred to mediation. If there is insufficient evidence to substantiate the complaint, the Commissioner must dismiss the complaint.





## 4.2 FOI complaints in 2010-11

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

Table 8 - FOI Complaints to the Information Commissioner							
Respondent Organisation	Lodged	Not yet accepted	Resolved informally	Prima Facie	Mediation	Hearing	Open at end of year
DET	1 (2)		1				2
DOH	(4)		4				
DOJ	4 (1)			1			5
DLP	(3)		2	1			1
NTPFES	2 (2)	1	1				3
SC	2 (0)			2	2	1	2
TIO	(1)			1	1		1
<b>Total</b>	<b>9 (13)*</b>	<b>1</b>	<b>8</b>	<b>5</b>	<b>3</b>	<b>1</b>	<b>14</b>

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

At the commencement of the reporting period, there were 13 FOI complaints carried over from the previous year. During the reporting period, a further nine FOI complaints were lodged with the Office making a total of 22 FOI files handled during the year.

Staff were successful in resolving three complaints informally before the prima facie stage. The Office issued five FOI prima facie decisions during the year and closed eight FOI complaint files.

Three complaints were mediated in full or in part during the year, but all three matters remained open at the end of the year, pending follow up of agreed outcomes or further mediation.

At the end of the reporting period, 14 FOI complaints remained open. It is clear that the Office has substantially reduced the number of complaints waiting to be resolved.

## 4.3 FOI Prima facie decisions delivered in 2010-11

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, on a question of law only. All five *prima facie* decisions found sufficient evidence to justify some or all of the aspects of the complaint for it to progress to mediation.

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

### **Prima facie decision – Inadequate Searches**

The complainant complained to the Information Commissioner that the organisation had conducted inadequate searches.

The decision maker found that there was insufficient evidence that adequate searches had been undertaken by the organisation. In particular, there was no elaboration of the physical and electronic locations that had been searched, no explanation of the search methodology, and no indication of the names of the persons who had conducted the search.

Sections 10 and 17 of the *Information Act* require a public sector organisation to provide as much of the information as is reasonably possible, and to handle applications 'as fairly and openly, as is reasonably possible'. Conducting adequate searches, and being able to show that adequate searches were conducted, is part of being fair and open. If the searches required would be too onerous, then at hearing the organisation would need to provide some evidence or explanation as to the extent of the search required and why it would unreasonably interfere with operations.

The decision maker referred the matter to mediation, which led to further searches being undertaken.

### **Prima facie decision – Workplace Report**

The complainant sought the report of an independent consultant who had assessed an organisation's workplace and made recommendations concerning how to handle interpersonal conflicts that had been occurring. The consultant had interviewed staff and some information from these interviews appeared in the report. Other parts of the report described issues generically, and talked about the nature of workplace conflict generally and approaches that could be taken in response. The complainant was one of the staff members from the workplace who had been interviewed.

The decision maker found that there was sufficient *prima facie* evidence to substantiate the complaint. Section 52 (deliberative processes) applied over some parts of the document, but sections 55(3)(b)(ii) (communications in confidence) and 56 (privacy) had been misapplied by the organisation. There was also a strong argument that even the parts of the document covered by exemptions should be released, as this would be in the public interest.

### **Prima facie decision – Confidential Information**

The complainant sought a copy of a complaint made against him concerning an allegedly illegal structure on his property. He specifically requested that the complainant's name and particulars be blocked out.

The organisation argued that the information was exempt because it was communicated in confidence.

The decision maker found that in order for information to be communicated in confidence, there needed to have been, at the time the information was given, a shared understanding (either express or implied) by both the giver and the receiver that the information would be kept confidential. The shared understanding of confidentiality must also be continuing.

In this case, the decision maker was provided with no evidence to suggest the author of the complaint requested that the complaint be kept confidential, or that any discussions about confidentiality occurred. The exemption does not apply in the absence of such information. There was sufficient prima facie evidence to substantiate the complainant's argument that the exemption had been applied incorrectly.

The decision maker also considered whether, had the information been communicated in confidence, that disclosure of the information would be reasonably likely to impair the ability of the organisation to obtain similar information in the future. In this case, the person who had made the complaint about the structure stated that he did not want the information disclosed to the complainant.

The decision maker agreed with the organisation that it was in the public interest that such similar information continues to be obtained, however was not persuaded that release of the document would be reasonably likely to impair collection of similar information in the future.

### **Prima facie decision – Information provided by the Commonwealth**

The complainant requested a copy of a contract that a third party had signed with the Northern Territory Government. The third party objected to the contract being released and complained to the Information Commissioner.

Some of the information sought by the complainant had been provided to the government from a body established by a law of the Commonwealth ('Body X'). The *Freedom of Information Act 1982* (Cth) specifically provided that Body X was exempt from freedom of information applications made under the Commonwealth Act. The relevance of this was that section 47 of the *Information Act* (NT) provides that information is exempt if it:

- comes from a body established by the law of another Australian jurisdiction; and



- the person or body would not be required to disclose the information under the corresponding FOI law of that jurisdiction.

The decision maker found that the way to apply this exemption was to ask: If the complainant had made an FOI application directly to Body X, would that information be exempt under the laws of the jurisdiction that created Body X (in this case, the Commonwealth)? If the answer is 'yes', the information is exempt under the *Information Act*.

The decision maker found there was sufficient evidence to substantiate the complaint and referred the matter to mediation.

### **Prima facie decision – Organisations to show reasoning**

The complainant had been issued with a trespass notice by the organisation after an alleged incident between herself and some of the organisation's employees. The complainant sought copies of witness statements that the organisation had collected in response to the incident.

The organisation argued that releasing the documents would cause a 'loss of faith in the system', an 'extremely negative impact on the ability of management to conduct HR processes with staff members', and a possible 'impact on the health of staff members' including 'potential claims for workers compensation if health is affected as a result of the release of the document due to stress'.

The organisation relied on a range of exemptions, but provided very little explanation of how or why those exemptions were applicable.

The decision maker found there was sufficient *prima facie* evidence to substantiate the complaint, finding that the failure to produce the evidence or reasoning used to apply an exemption is itself sufficient evidence that the exemption has not been appropriately applied.

The matter was referred to mediation where it was resolved.



## 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. The Information Privacy Principles (IPPs) are set out in Schedule 2 of the Act. 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 Act also provides remedies if an individual's privacy has been interfered with.

### 5.1 Privacy activity in 2010-11

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.

This year, there has been particular emphasis on sharing information between agencies. More specifically, the Office has been working closely with:

- the Department of Health and SA-NT DataLink to facilitate the provision of privacy protected linked data to researchers and policy officers. The aim of the project was to enable analysis and use of population-based administrative databases to support research, program evaluation and policy development in the Northern Territory and South Australia.
- the Department of Health and the Department of Children and Families to develop solutions to the problems that inhibited information sharing between the two organisations after the Department of Health and Families split into two separate Departments. This move resulted from the Report 'Growing them strong, together', handed down by the Board of Inquiry into the Child Protection system in the Northern Territory.

## **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**

An individual may complain to an organisation if they believe that the organisation has breached their privacy. If they do not receive a response from the organisation, or the response is inadequate, they 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.

## **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 2010-11

The number of privacy complaints made in 2010-11 is as follows:

Respondent Organisation	Lodged	Resolved Informally	Prima Facie	Dismissed/not substantiated	Mediated	Hearing	Open at end year
DHLGRS	0 (1)					1	
DOH	0 (1)						1
NTPFES	1 (4)	3	2		2		2
TIO	2 (0)		2	1			1
OTHER	0 (1)	1	1		1		
<b>TOTAL</b>	<b>3 (7)*</b>	<b>4</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>4</b>

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

At the commencement of the reporting period, there were seven privacy complaints open and the Office received three new complaints during the year. Six of these complaints were finalised with only one requiring a final hearing. Four privacy complaints are carried forward into 2011-12.

A prima facie decision was issued for five privacy complaints during the reporting period, with a sample summarised below.

### Prima facie decision 1.

An organisation sought to collect sensitive health information about the complainant from a health provider. The health provider contacted the complainant about the request and the complainant indicated that he did not consent to the information being disclosed to the organisation. The complainant claimed the organisation's conduct was a breach of IPP 1, which sets out what organisations can and cannot do when collecting personal information.

The decision maker found that no breach had occurred because no information had actually been 'collected'.

### Prima facie decision 2.

The complainant alleged that an organisation had breached the IPPs in the way it handled her personal information. The organisation was contracted by the Government organisation to carry out certain government services.

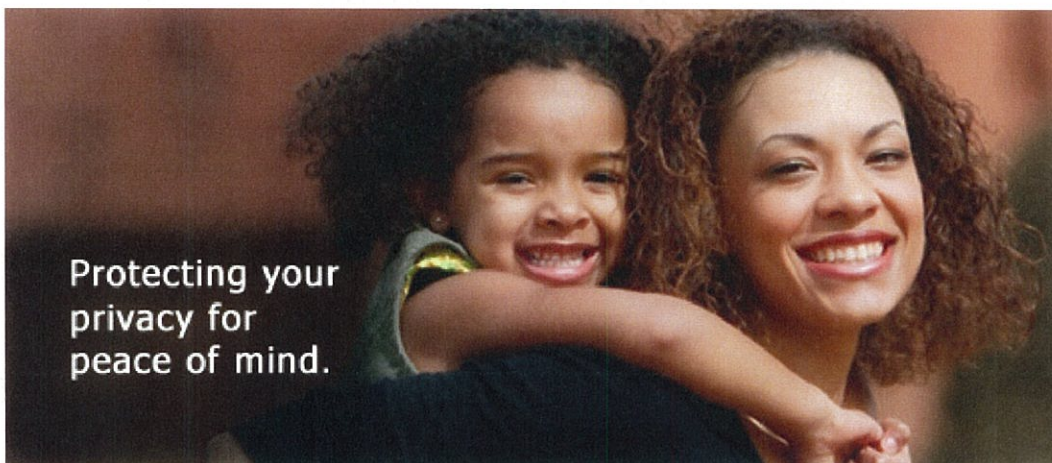
The organisation argued that it was not subject to the IPPs and it had a privacy policy that stated it was not subject to the freedom of information provisions of the *Information Act*.

The decision maker confirmed that the *Information Act* applies to contract service providers in respect of the services they provide to an NT government organisation.



The decision maker looked at the agreement between the organisation and the Agency. The contract detailed service outcomes and data collection and reporting that was required to be undertaken by that organisation. The kind of data the organisation was required to collect specifically involved handling sensitive personal information.

The decision maker was of the view that the *Information Act* applied to the organisation when it was delivering the services it was contracted to deliver under the agreement with the Agency. In particular, it was subject to the IPPs when collecting and handling personal information.



### **Prima facie decision 3.**

Two complainants alleged that an employee of an organisation had inappropriately accessed a record on an electronic database that contained their personal information, and used that information in an inappropriate manner. Initially the organisation investigated the matter and concluded no inappropriate access had occurred, however on subsequent review found that inappropriate access had occurred. They sent the complainant a letter confirming the breach, indicating the employees in question had been disciplined, and provided an apology.

The complainant was not satisfied with the apology.

The decision maker found that there was sufficient prima facie evidence to substantiate the complaint that the breach occurred, and the matter was referred to mediation where it was subsequently resolved.

### **Prima facie decision 4.**

An organisation sought information about the complainant from a private health care provider. The health care provider submitted the information as requested. When questioned about this by the complainant, the health care provider claimed that he had received a 'very aggressive' and 'threatening' letter from the organisation, demanding the information. The complainant alleged that the information had been collected unfairly, in breach of IPP 1.



The decision maker obtained a copy of the letter in question. The letter was phrased in polite wording and nothing about it could be construed to be aggressive or threatening. This aspect of the complaint was dismissed.

The complainant also alleged that the organisation inappropriately disclosed sensitive personal information about his medical history to a private health care provider. The complainant provided first-hand evidence of things said by the health care provider that the provider could not have known unless the provider had been given this information by the organisation.

The decision maker's role at the prima facie stage is not to evaluate the complainant's credibility, but to take the evidence at face value and decide whether there is sufficient evidence to substantiate the complaint. On this test there was sufficient evidence to substantiate the complaint. The matter was referred to mediation.

## **5.6 Hearing and decision of the Information Commissioner**

In August 2010, the Information Commissioner published a final decision in a privacy complaint. The complainant alleged that a public officer in a government department had breached his privacy by discussing with outsiders (including colleagues of his) personal details about him from information held on the departmental files. The information included comments that the complainant had made racist and abusive remarks and threats of violence to certain departmental clients and that he had been the subject of police intervention and an Apprehended Violence Order. The department denied the breach. The officer involved admitted speaking to the outsiders who she thought might help give some insight to assist the department in dealing with various disputes between the complainant and the departmental clients. She denied that any personal information was disclosed.

The Commissioner reviewed the evidence and found that:

- Personal information of the type disclosed to outsiders was recorded and easily accessible to staff on the departmental files;
- On the balance of probabilities the public officer passed on personal information about the complainant to the outsiders;
- The disclosure was not sanctioned under IPP 2.1 because it was collected for a different primary purpose;
- The disclosure was for a secondary purpose related to the primary purpose but the complainant would not have reasonably expected his personal information to be disclosed to the outsiders. Despite the best intentions of the public officer, the disclosure was therefore not sanctioned as a secondary purpose under IPP 2.1(b)(ii) of the Act;
- The disclosure was not sanctioned under IPP 2.1(d)(i) of the Act which sets a very high bar and requires not only that there

be a “serious and imminent threat” to a particular person or people but also that the disclosure to a particular person or agency is likely to reduce that threat. The Commissioner noted the legitimate concerns of the public officer about the problems between the complainant and departmental clients and acknowledged her sincere motivation to assist. However, the Commissioner did not find on the evidence that a serious and imminent threat existed to sanction the disclosure to the outsiders.

- Upon finding a privacy breach, the Commissioner ordered the department to apologise in writing to the complainant, to review the adequacy of its Information Act training and to amend its departmental policy to clarify to staff that a ‘serious and imminent threat’ is required before disclosures of personal information are sanctioned.
- Note: See Item 3.3 for details of recent changes made to IPP 2(d)(i) to enable disclosure of personal information if the department reasonably believes it is necessary to lessen or prevent a serious or imminent threat of harm to or exploitation of a child.



## 6 Other functions of the Information Commissioner

### 6.1 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.

During the year, the Office provided 556 hours of policy assistance and advice. Most enquiries and requests for advice are from government agencies rather than from members of the public.

During the year, the Office provided advice on a variety of topics including:

- Conducting a regular household survey for the 2030 strategic plan;
- The publication of decisions of the Parole Board;
- The release of documents belonging to the Standing Committee of Attorneys-General;
- The motor vehicle accident report forms;
- The publication of data about weeds;
- Reporting requirements under the *Child Protection (Offender Reporting and Registration) Act*;
- A survey about the problems faced by a group of people employed in the public sector;
- The collection of data for the Australian Bureau of Statistics;
- The disclosure of information contained in a Banning Alcohol and Treatment (“BAT”) Notice to the Police; and
- Potential concerns about oversight provisions relating to FOI and privacy amendments, resulting from the COAG reform agenda.

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.

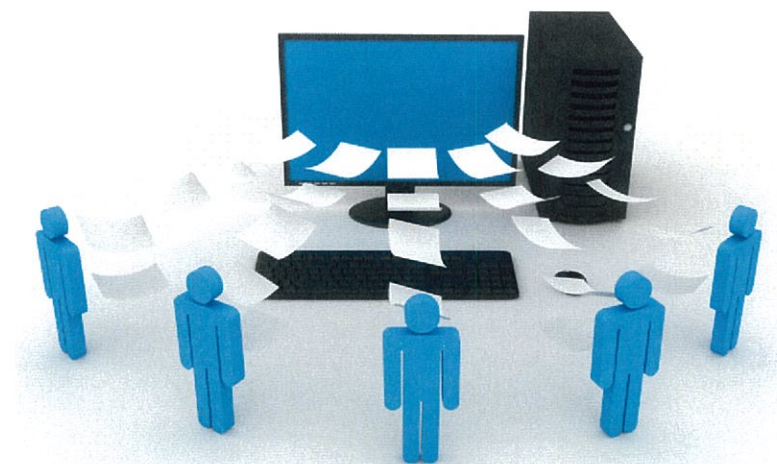
The Office commented on around 24 Cabinet Submissions on a variety of topics where privacy issues may need to be examined.

### 6.2 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, exhibitions 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.



### 6.3 General enquiries

During 2010-11 the Office responded to 408 enquiries, with 93% of people receiving a response within 24 hours. In some cases it was not possible to respond within 24 hours because the response required research, liaison with other organisations or lengthy policy advice.

People can contact the Office by telephone 1800 005 610 or e-mail [infocomm@nt.gov.au](mailto:infocomm@nt.gov.au).

### 6.4 Presentations

Staff at the Office conducted or facilitated 20 presentations during the year which were attended by 315 participants. The need for training amongst public sector employees has changed now that the Act has been in operation for seven years, yet these figures represent a small increase when compared with last year, with organisations seeking more detailed sessions, particularly about privacy. There was an increase this year in awareness sessions for city, town and shire councils, and Megan Carter, Director of Information Consultants Pty Ltd, conducted two training courses during the reporting period; one in November 2010 and



one in April 2011. These courses provide a full day each at introductory and intermediate levels.

This Office tailors presentations to the needs of the audience. These are some examples of presentations delivered during 2010-11:

- A presentation to the Department of Business and Employment on the FOI and privacy obligations in relation to the procurement process;
- A general induction session and a specific session with respect to Government Business Divisions to the Department of Construction and Infrastructure;
- A number of training sessions to Local Councils providing an overview of the *Information Act*;
- A training session on privacy issues relating to good record management practices;
- A presentation to employees at the Department of Health on privacy protection and the correction of patient information;
- A presentation to hospital employees on privacy and confidentiality;
- A training session to Northern Territory Treasury Government Graduates Program about their FOI and privacy obligations under the *Information Act*.

## 6.5 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 June 2011 “Use and disclosure of health information” following an amendment to the Act that permits the Commissioner to issue guidelines about the use and disclosure of health information necessary for research, or the compilation of statistics in the public interest. If an organisation wishes to use or disclose health information for research or statistical purposes, it must satisfy the criteria set out in IPP 2.1(ca) and a Human Research Ethics Committee must have reviewed the proposed activity and be satisfied that the public interest in the activity outweighs the public interest in maintaining the level of privacy protection provided by the Act.

A current list of guidelines, including an updated list of the IPPs, is available at [http://www.nt.gov.au/justice/infocomm/publications/pd\\_2.htm](http://www.nt.gov.au/justice/infocomm/publications/pd_2.htm).

## 6.6 Website

The website of the Office of the Information Commissioner ([www.foi.nt.gov.au](http://www.foi.nt.gov.au)) is designed for Information Officers and members of the public. It contains, among other things, information about how to make an FOI or correction application, how to complain about a breach of privacy, or make an FOI complaint. It also contains information of the possible costs, the guidelines, grants of authorisation and decisions of the Office.

## 6.7 Information Officers' Forum

The Office organises regular forums which permit Information Officers to meet and discuss specific areas of interest or concerns about the legislation. The Office also organises guest speakers to give presentations and provides Information Officers with up-dates on amendments to the *Information Act* and developments generally in the field of FOI and privacy, both nationally and internationally.

Twenty-eight Information Officers attended a forum in November 2010 at which the following topics were discussed:

- the Asia Pacific Privacy Authorities forum which was hosted by the Northern Territory in June 2010;
- the retention and use of research data;
- current IT security measures in place in public sector organisations;
- the archiving of FOI files;
- reporting requirements for the 2010-2011 annual report;
- the Queensland Right to Information Day.

Megan Carter, Director of Information Consultants Pty Ltd, gave a presentation on recent FOI developments in the other jurisdictions.

Twenty six Information Officers attended a Forum held in June, at which the following topics were discussed:

- progress of the SA•NT DataLink;
- the new Guideline "use and disclosure of health information for research and statistical purposes";
- information sharing between Government departments;
- status of the review of the *Information Act*;
- the accurate statistical reporting of FOI data; and
- a presentation on cloud computing.



## 6.8 Privacy Awareness Week

Privacy Awareness Week (PAW) is an annual event to raise awareness about the importance of protecting privacy. It is an initiative of the Asia Pacific Privacy Authorities (APPA) whose members jointly sponsor the event and has been held during the first week of May for the last three years.



Resources and planning for the event are shared between APPA members, generally allowing for the development of superior promotional materials for all APPA members than each jurisdiction would otherwise be able to produce. Small jurisdictions like the Northern Territory particularly benefit from this cooperative approach.

APPA members jointly developed two promotional products to underpin Privacy Awareness Week 2011:

- An animation video, entitled 'How Private is Your Profile?' was launched to promote awareness of some of the privacy risks associated with social networking sites. The animation was distributed on a dedicated APPA YouTube channel, and was viewed 4220 times; and
- An on-line survey, seeking information on individuals' privacy. The survey was made available in English, Spanish, Korean and Chinese. The survey was open from 1-31 May 2011 and 10,641 people participated.

APPA members anticipate that the survey results will provide useful insights into people's online privacy behaviours. The Communications Working Group will collate the survey responses and analyse the results. Our website will publish the results as soon as they are available on [www.infocomm.nt.gov.au](http://www.infocomm.nt.gov.au).

## 6.9 Supporting 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.

## **6.10 Staying informed of developments in FOI and privacy**

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.

In the last few years a number of Australian jurisdictions reviewed their legislation which resulted in changes to their legislation.

The new Office of the Australian Information Commissioner, headed by Professor John McMillan AO, encompasses the new Privacy Commissioner, Mr Timothy Pilgrim, and the Freedom of Information Commissioner, Dr James Popple. For full details see the OAIC website <http://www.oaic.gov.au/index.html>. For links to other Australian jurisdictions, see <http://www.nt.gov.au/justice/infocomm/faq/links.htm>.

## **6.11 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.

Membership consists of the Privacy Commissioners from Australia, British Columbia, Canada, Hong Kong, Korea, New South Wales, New Zealand, Northern Territory, Victoria and the recently joined Federal Institute for Access to Information and Data Protection, Mexico, the Office of the Information Commissioner, Queensland and the Federal Trade Commission of the United States.

APPA holds bi-annual forums, hosted by different members, with the 2010-11 forums being held in Auckland, New Zealand and Jeju, South Korea. The Commissioner attended the Auckland forum.



## 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:

AIAC	Association of Information Access Commissioners (Australia)
iappANZ	Australian and New Zealand Chapter of the International Association of Privacy Professionals
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

## 6.13 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.

It is important for public sector organisations to maintain accurate and complete records of their business for a variety of reasons, not least to be able to locate and identify information for prompt responses to applications for access to information under the Act. As with FOI and privacy, balance is required with respect to document management.



It's all  
about  
balance ...



The Records Policy Unit in the Department of Business and Employment is responsible for providing guidance to organisations about records management and departmental staff have worked closely with the Office to ensure no inconsistencies in Part 9 of the *Information Act* during a review of the standards in 2009-10. In August 2010, the department published the new Records Management Standards for Public Sector Organisations in the Northern Territory.

Currently, the Department of Business and Employment is leading a Records Management Reference Group to provide records management advice with respect to the management of physical and electronic records across the NT Government. The Group meets monthly and consists of some eight key public sector organisations, such as Health, Police, Education, Housing, Planning and Infrastructure, Primary Industry and Power Water. This Office is invited to attend and provide advice from an FOI/privacy perspective.



# Appendices

## Appendix 1

### OFFICE OF THE INFORMATION COMMISSIONER

#### Statement of Financial Performance For the year ended 30th June 2011

	\$ \$'000	\$ \$'000
<b>INCOME</b>		
Appropriation - Output		631
Goods and Services Received Free of Charge		67
<b>TOTAL INCOME</b>		<b>698</b>
<b>EXPENSES</b>		
Employee Expenses		767
<i>Administrative Expenses</i>		
Repairs and Maintenance		0
Purchase of Goods and Service*		183
Property Management	5	
Accommodation	3	
Communications	15	
Consultants Fees	1	
Consumables / General Expenses	1	
Document Production	2	
Information Technology Charges	22	
IT Consultants	1	
IT Hardware and Software Expenses	7	
Legal Expenses	64	
Library Services	3	
Marketing & Promotion	5	
Membership Subscription	3	
Motor Vehicle Expenses	18	
Office Requisites and Stationery	2	
Official Duty Fares	8	
Other Equipment Expenses	11	
Training and Study Expenses	9	
Travelling Allowances	3	
Depreciation		3
DBE Services Free of Charge		67
<b>TOTAL EXPENSES</b>		<b>1,020</b>
<b>NET SURPLUS / (DEFICIT)</b>		<b>(322)</b>



## 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 2010-11:

- **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

These are the abbreviations for public sector organisations (PSOs) referred to in the tables below, in the order they appear in the tables:

AAPA	Aboriginal Areas Protection Authority
DBE	Department of Business and Employment
DCF	Department of Children and Families
DCI	Department of Construction and Industry
DCM	Department of the Chief Minister
DET	Department of Education and Training
DHLGRS	Department of Housing, Local Government and Regional Services
DLA	Department of Legislative Assembly
DLP	Department of Lands and Planning
DOH	Department of Health
DOJ	Department of Justice
DOR	Department of Resources
NRETAS	Department of Natural Resources, Environment, the Arts and Sport
NTAGO	Northern Territory Auditor-General's Office
NTEC	Northern Territory Electoral Commission
NTPFES	Northern Territory Police, Fire and Emergency Services
NTT	Northern Territory Treasury
OCPE	Office of the Commissioner for Public Employment
TNT	Tourism NT
CDU	Charles Darwin University
TIO	Territory Insurance Office
TRB	Teacher Registration Board
ASTC	Alice Springs Town Council
DCC	Darwin City Council
KTC	Katherine Town Council
SC	Shire Councils

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. The Office appreciates the co-operation of FOI and privacy administrators within organisations and wishes to thank those organisations that completed the returns and responded 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 /PSO	Lodged	Handled	Finalised	Not accepted	Pending acceptance	Transfer	Withdrawn	Pending at year's end
AAPA	1	1		1				
DBE	3	3	2					1
DCF	3	3						3
DCI	4	4	3					1
DCM <sup>5</sup>	(4) 8	12	7			1		3
DET	(3) 12	15	13					2
DHLGRS	52	52	49				2	1
DLA	3	3	2					1
DLP <sup>6</sup>	9	9	5	2				2
DOH	(4) 54	58	47	5	3			3
DOJ	(6) 54	60	57					3
DOR	10	10	8	1				1
NRETAS	(2) 3	5	4			1		
NTAGO	(1) 1	2	1					1
NTEC <sup>7</sup>	(1) 1	2	1					1
NTPFES <sup>8</sup>	(7) 188	195	144	28			8	15
NTT	(2) 4	6	3	1		1		1
OCC	(1) 0	1	1					
OCPE	1	1						1
TNT	2	2	2					
CDU	2	2	2					
TIO	1	1	1					
TRB	1	1						1
ASTC	(1) 0	1					1	
DCC	7	7	6				1	
KTC	2	2	2					
SC	1	1	1					
<b>TOTALS</b>	<b>(32) 427</b>	<b>459</b>	<b>361</b>	<b>38</b>	<b>3</b>	<b>3</b>	<b>12</b>	<b>41</b>

<sup>5</sup> DCM reported one application pending acceptance at the end of 2009/10. This is included in the open applications for 2010/11 and adds 1 extra to the count

<sup>6</sup> DLP reported 2 outstanding access applications at the end of 2009-10 but advised these were also counted as review applications, so are not included here.

<sup>7</sup> NTEC requested a change from last year's 2 applications lodged and reported as finalised to 1 finalised and 1 pending at year's end

<sup>8</sup> NTPFES reported 5 outstanding access applications at the end of 2009-10 but advised that 7 was the correct figure with which to start 2010-11



**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 /PSO	granted in full	granted in part	refused in full		pages in full	pages in part	refused in full
AAPA							
DBE	1	1			310	11	
DCF							
DCI		1	2		135	2	111
DCM		5	2		1401	37	108
DET	7	4	2		2071	10	5
DHLGRS	14	31	4		5930	1071	203
DLA	1		1		78		
DLP	1	3	1		1647	105	77
DOH	33	9	5		5277	92	2
DOJ	25	19	13		3424	153	499
DOR	1	2	5		292	4	5
NRETAS		4			2114	846	85
NTAGO	1				130		
NTEC	1				66		
NTPFES	18	98	28		5241	1056	3397
NTT	1		2		421		45
OCC	1				6		
OCPE							
TNT		1	1		1	1	
CDU	1	1			37	14	
TIO	1				8		
TRB							
ASTC							
DCC	3		3		141		3
KTC	1		1		1016		33
SC			1				5
<b>TOTAL</b>	<b>111</b>	<b>179</b>	<b>71</b>		<b>29746</b>	<b>3402</b>	<b>4578</b>



**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.

<b>Table 3 /PSO</b>	<b>exempt</b>	<b>publicly available</b>	<b>not exist</b>	<b>cannot find</b>	<b>cannot identify</b>	<b>unreasonable interference</b>	<b>not covered</b>
AAPA		1					
DBE	1						
DCF							
DCI							3
DCM	5		1				1
DET	5		1				
DHLGRS	35		2		1		
DLA			1				
DLP	3				1		1
DOH	9		5				
DOJ	22	1	2	1	1	5	
DOR	4		3				
NRETAS	4						
NTAGO							
NTEC							
NTPFES	126	2	9				
NTT	1		1				
OCC							
OCPE							
TNT			*1 <sup>9</sup>				1
CDU	1						
TIO							
TRB							
ASTC							
DCC	2				1		
KTC	1						
SC	1						
<b>TOTAL</b>	<b>220</b>	<b>4</b>	<b>25</b>	<b>1</b>	<b>4</b>	<b>5</b>	<b>6</b>

<sup>9</sup> Information destroyed in accordance with HRM:4.33.1 schedule

#### **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.5 exempts Government Business Divisions for non-personal information (s.5(3) and 5(4))
- 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.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 2<sup>nd</sup> 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)<sup>10</sup>**

Table 4 /PSO	s.5(4)	45(1) (a)(i)	45(1) (a)(ii)	45(1) (a)(iii)	45(1) (a)(iv)	45(1) (a)(v)	45(1) (a)(vii)	46 (1)(a)	46 (2)(a)	46 (2)(b)	46 (2)(c)	47	48	49(c)	49(d)	51
AAPA																
DBE																
DCF																
DCI	113															
DCM		89		89	89	89					8			2		
DET																
DHLGRS		235	2												8	
DLA																
DLP		4	3		1		1							23		1
DOH			1			1		1			1		29	1		
DOJ		118		115					2					1	6	
DOR												2			3	
NRETAS															51	
NTAGO																
NTEC																
NTPFES									24	10	38			31	84	
NTT		26	7													6
OCC																
OCPE																
TNT	1															
CDU																
TIO																
TRB																
ASTC																
DCC																
KTC															33	
SC																
<b>TOTAL</b>	<b>114</b>	<b>472</b>	<b>13</b>	<b>204</b>	<b>90</b>	<b>90</b>	<b>1</b>	<b>1</b>	<b>26</b>	<b>10</b>	<b>47</b>	<b>2</b>	<b>29</b>	<b>58</b>	<b>185</b>	<b>7</b>

<sup>10</sup> 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.



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

Table 4 cont	52 (1)(a)	52 (1)(b)	53 (c)	53 (d)	54 (a)	54 (d)	55 (1)	55 (3)	56 (1)(a)	56 (1)(b)	57 (1)(b)	57 (3)(b)	57 (3)(c) (iii)	57 (3)(d)	TOTALS
AAPA															
DBE	8	8													16
DCF															
DCI															113
DCM			1				1	30			14				412
DET								15							15
DHLGRS		9					14	1006			5				1279
DLA															
DLP	33	43					18	1	7		10	8	3		156
DOH								6	64						104
DOJ			27	3	3	6		4	178	4	303				770
DOR									4						9
NRETAS	5								903						959
NTAGO															
NTEC															
NTPFES									945		404			127	1663
NTT	6														45
OCC															
OCPE															
TNT															1
CDU									14						14
TIO															
TRB															
ASTC															
DCC								1	2						3
KTC															33
SC									5						5
<b>TOTAL</b>	<b>52</b>	<b>60</b>	<b>28</b>	<b>3</b>	<b>3</b>	<b>6</b>	<b>32</b>	<b>13</b>	<b>3173</b>	<b>4</b>	<b>722</b>	<b>22</b>	<b>3</b>	<b>127</b>	<b>5597</b>

**Table 5 - Internal review applications**

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

<b>Table 5 /PSO</b>	lodged	open at year's end	finalised	not accepted	decision confirmed	decision varied	decision revoked	better outcome
AAPA								
DBE								
DCF								
DCI								
DCM	(4) 0		4		2	1	1	2
DET	(0) <sup>11</sup> 1		1		1			
DHLGRS								
DLA								
DLP	(2) 0	1	1			1		1
DOH	1		1		1			
DOJ	3	2	1		1			
DOR								
NRETAS	2		1	1	1			
NTAGO								
NTEC								
NTPFES	(0) <sup>12</sup> 9	1	8		2	5	1	6
NTT								
OCC								
OCPE								
TNT								
CDU								
TIO								
TRB								
ASTC								
DCC								
KTC								
SC	1		1		1			
<b>TOTAL</b>	<b>(6) 17</b>	<b>4</b>	<b>18</b>	<b>1</b>	<b>9</b>	<b>7</b>	<b>2</b>	<b>9</b>

<sup>11</sup> DET advised that the outstanding review application reported last year was an error as the file was re-numbered for an access application.

<sup>12</sup> NTPFES reported no outstanding review applications in 2009-10 but insisted on one open application at the start of 2010-11. Given the figures tally without an open application at the start of the year, it is here reported as a zero (ie OIC took the liberty to ignore the outstanding application reported).



**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 /PSO	Application fees charged	Processing fees charged	total charged	A fees waived/reduced	P fees waived/reduced	total waived
AAPA	30.00	0.00	30.00	0.00	0.00	0.00
DBE	90.00	683.60	773.60	0.00	0.00	0.00
DCF	30.00	0.00	30.00	0.00	0.00	0.00
DCI	120.00	754.00	874.00	0.00	0.00	0.00
DCM*	210.00	2883.31	3093.31	0.00	0.00	0.00
DET	270.00	0.00	270.00	0.00	0.00	0.00
DHLGRS	240.00	851.00	1091.00	30.00	562.00	592.00
DLA	90.00	294.37	384.37	0.00	0.00	0.00
DLP**	120.00	2878.00	2998.00	30.00	0.00	30.00
DOH	270.00	5821.37	6091.37	210.00	938.75	1148.75
DOJ	570.00	0.00	570.00	90.00	0.00	90.00
DOR	210.00	2822.07	3032.07	0.00	0.00	0.00
NRETAS	90.00	6272.20	6362.20	0.00	5137.85	5137.85
NTAGO	30.00	0.00	30.00	0.00	0.00	0.00
NTEC***	30.00	0.00	30.00	0.00	0.00	0.00
NTPFES****	1470.00	1330.50	2800.50	750.00	6743.60	7493.60
NTT	90.00	1125.25	1215.25	0.00	800.00	800.00
OCC	0.00	0.00	0.00	0.00	0.00	0.00
OCPE	30.00	0.00	30.00	0.00	0.00	0.00
TNT	30.00	0.00	30.00	0.00	0.00	0.00
CDU	0.00	0.00	0.00	0.00	0.00	0.00
TIO	0.00	0.00	0.00	0.00	0.00	0.00
TRB	30.00	0.00	30.00	0.00	0.00	0.00
ASTC	0.00	0.00	0.00	0.00	0.00	0.00
DCC	150.00	0.00	150.00	0.00	0.00	0.00
KTC	60.00	240.08	300.08	30.00	50.00	80.00
SC	30.00	0.00	30.00	0.00	0.00	0.00
<b>TOTAL</b>	<b>4290.00</b>	<b>25955.75</b>	<b>30245.75</b>	<b>1140.00</b>	<b>14232.20</b>	<b>15372.20</b>



**Table 7 - Correction applications**

Table 7 /PSO	lodged	transfer	with-drawn	open year's end	finalised	correction made as specified	made in another form	no correction made
DOH	1			0	1	1		
DOJ	1			0	1			1
NTPFES	(2) 7	1		0	8	1	1	6
<b>TOTAL</b>	<b>(2) 9</b>	<b>1</b>		<b>0</b>	<b>10</b>	<b>2</b>	<b>1</b>	<b>7</b>

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.

### Changes to Public Sector Organisations

The main change during 2010-11 occurred in the Department of Health and Families, which was divided into a Department of Health and a Department of Children and Families. This change took effect on 1 January 2011.

- The **Department of Health** provides services that work together for the health and well-being of all communities across the Territory, maximising physical health but also promoting mental, social and environmental well-being.
- The **Department of Children and Families** provides support and services to promote child safety and family wellbeing, including child protection, adoption, foster care, family and parenting support, youth and domestic and family violence.
- The **Department of Construction and Infrastructure** was created in December 2009, when the former Department of Planning and Infrastructure became the Department of Lands and Planning and the Department of Construction and Infrastructure but for the purpose of FOI statistics, DCI commenced on 1 July 2010. It therefore appears for the first time in this annual report.



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

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