

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



## **Annual Report 2011-2012**







30 September 2012

The Hon John Elferink MLA  
Attorney-General and Minister for Justice  
Parliament House  
DARWIN NT 0800

Dear Minister

Pursuant to section 98 of the *Information Act* and section 48 of the *Public Interest Disclosure Act*, please find attached the Annual Report on the operations of the Office of the Information Commissioner and the Commissioner for Public Interest Disclosures for the period 1 July 2011 to 30 June 2012.

Yours sincerely

Allan Borg  
A/Commissioner, Information and Public Interest Disclosures

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## Message from the Commissioner

This is the 3<sup>rd</sup> combined Annual Report from the Office of the Commissioner, Information and Public Interest Disclosures. It has been a busy year with the finalisation of a number of reports into serious improper conduct by public officers in a variety of public bodies. Summaries of these investigations are contained in section 2.5.6 of this report.

Although most public officers are honest, loyal and working in the public interest, the Office has identified several areas of concern. Procurement, an essential function across the whole of government, has been identified in jurisdictions across the world as the process most likely to engender corrupt conduct. The Northern Territory is no exception and investigations have revealed that in some public bodies, a clan mentality exists within certain small workgroups where improper conduct is tolerated and supported, with a 'get the job done regardless' attitude and where the giving and receiving of gifts and benefits is a common practice.

Recommendations such as increased controls over the procurement process, the tightening of the gifts and benefits policies, and the establishment of audit and risk committees have restricted the ability for public officers to engage in this type of conduct.

It is often said that corruption is an activity that takes place "behind closed doors, between consenting adults." Both parties benefit and neither has the least incentive to make the transaction known. This is the difficulty in investigating improper conduct, and why the protections and incentives found in the *Public Interest Disclosure Act* encourage disclosers to take that first step of making a disclosure.

During this reporting period, Chief Executives have been willing to work with the Office by assisting with investigations and complying with recommendations. As a result no public reports have had to be tabled. We see this as a 'win' as the fact that Chief Executives work cooperatively with us means that they take responsibility for the issues and are more likely to make sustainable changes to the culture of their organisations.

For independent integrity agencies such as ourselves, we sometimes wonder how we can continue to satisfy our statutory obligations in a world of diminishing resources. Where FOI and privacy are concerned, we continue to put a big effort into supporting information officers in public bodies, ensuring they have training, a network of contacts to support them and regular communication from our office. Although their skill levels differ, there are many good information officers who do a great job.

We placed special emphasis on youth and seniors during Privacy Awareness Week – both groups with particular needs when it comes to privacy.

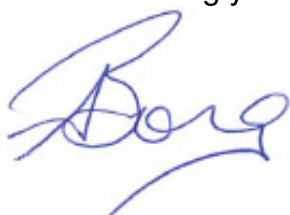
Finally, mention needs to be made about the importance of good information sharing between public bodies and other stakeholders. A good information sharing arrangement is one where there is a correct balance between each individual's right to keep personal information private and the need to share personal information with others in some circumstances. One such time is when a child's safety or wellbeing is at risk.

Any information sharing agreements or guidelines only come alive when stakeholders receive the training they need to understand the rules of sharing in culturally appropriate ways. This is an area that requires a greater effort by public bodies and one in which we will continue to provide support and guidance.

Looking forward, this Office is focussed on the following:

- continuing efforts to educate public officers about the *Public Interest Disclosure Act* and the need for compliance with government and departmental policies such as the Code of Conduct, the Procurement Guidelines, Gifts and Benefits policies and Conflict of Interest policies;
- moving towards a proactive rather than reactive approach to education through the development of a Corruption Prevention Training program and the modification of the website training modules;
- streamlining the complaint process, with the development of an online complaint and contact form, accessible through our website;
- an increased focus on remote areas and indigenous issues. Concerns have been raised about privacy issues surrounding social media, including Facebook and Diva Chat, and the need to ensure that people know their rights and where to get help; and
- establishing connections with other independent bodies to develop a joint education and awareness package such as the 'travelling road-show' concept employed recently by Consumer Affairs, the Anti Discrimination Commission and others. With the reality of limited resources it is important to target specific audiences, to pool resources to make a dollar go further and also to be realistic about achievable outcomes. A recent example of such collaboration during 'Seniors Week' showed how well this concept can work.

Finally, I must thank all members of the Office who continually exhibit dedication, professionalism and enthusiasm. I must make special mention of the Commissioner, Brenda Monaghan, who is absent from the office for a short while. The support shown by the Commissioner in these somewhat trying times, has inspired the team to achieve its goals and to aim even higher in the coming year.



Allan Borg  
A/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 both Offices and is called Commissioner, Information and Public Interest Disclosures.

The Office of the Information Commissioner was established in 2002 in preparedness for the commencement of the *Information Act* on 1 July 2003. The Office deals with all matters relating to freedom of information (FOI) and privacy under that Act. This is its ninth 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 third 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 and is called Office of the Commissioner, Information and Public Interest Disclosures

At 30 June 2012, the 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.
- 0.6 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.
- 0.25 x AO6 A/Office Manager – Sandy Lay.
- 1 x AO4 Investigation Support / Administration Officer – Sandy Lay.

### 1.2. Office expenditure

Total expenditure by the joint Office (Information and Public Interest Disclosures) in 2011-12 on employee expenses and the purchase of goods and services was \$953,000.

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.



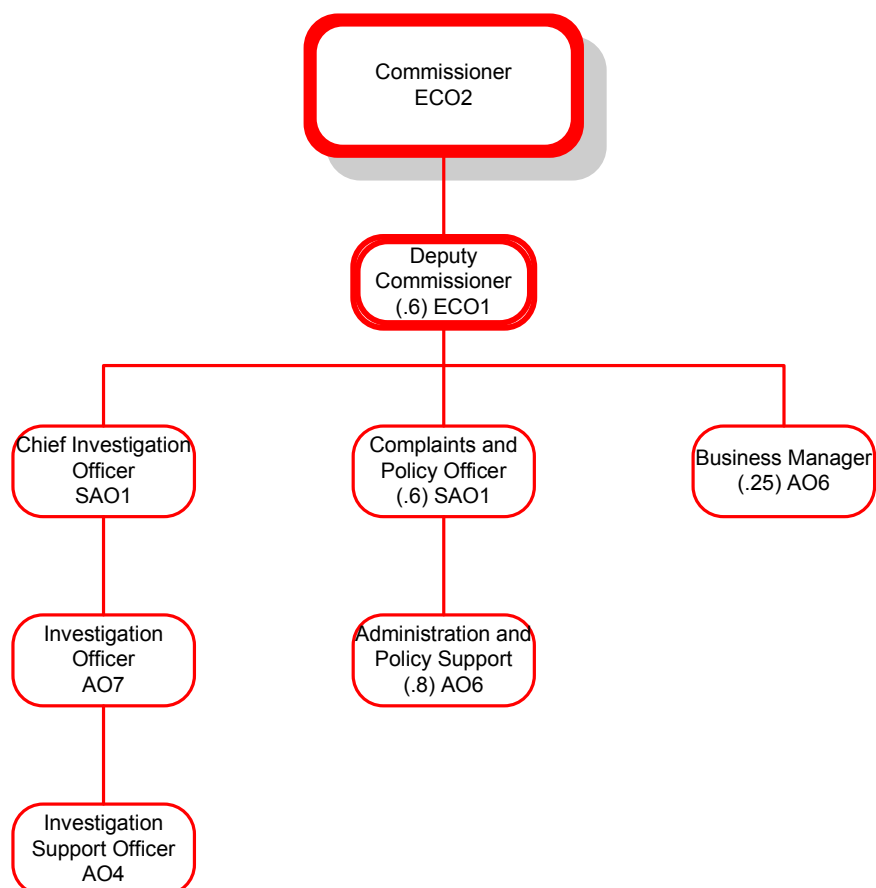
A Statement of Financial Performance for 2011-12 is included at Appendix 1 to this Report. The Office is also included in detailed financial statements and performance information that appear in the Annual Report of the Department of Justice.

### 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 such as Performance Measures Reporting, but also departmental and divisional documents like Business Plans, Annual Report and Risk Assessment Plans.

Office Structure as at 30 June 2012



## 2. Office of the Commissioner for Public Interest Disclosures

### 2.1. Overview of legislation

The main objectives of the *Public Interest Disclosure 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.

A disclosure which contains allegations of serious criminal behaviour is referred for information to the Police Commissioner prior to the investigation commencing. Any criminal offences identified during our investigations (apart from those in breach of the *Public Interest Disclosures Act*) need to be reported to and investigated by the Northern Territory Police. If, during an investigation, it becomes clear that criminal conduct has occurred, then a decision is made as to whether our investigation should continue to completion or be suspended, pending a Police investigation. In circumstances where our investigation continues, the final report may contain a recommendation that the responsible authority refers the improper conduct to the Commissioner of Police for investigation. Breaches of the Code of Conduct identified during investigations are dealt with by recommendations for the Agency to conduct their own disciplinary investigations.

## **2.2. Legislative amendments**

During this past financial year, the Children's Commissioner joined the Commissioner for Public Employment and the Work Health Authority as a prescribed referral body as per section 22(1)(d) of the Act. This allowed the Commissioner, if considered appropriate, to refer a public interest disclosure to one of these bodies for investigation. Other legislated referral bodies include the Ombudsman, the Police Commissioner and the Auditor-General.

## **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 above mentioned referral bodies 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. Memoranda of Understanding between the Commissioner and the Children's Commissioner and the Health and Community Services Commissioner are under development)<sup>1</sup>;
- reporting to public bodies and to the discloser regarding the outcome of an investigation and any recommendations for change<sup>2</sup>;

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

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

- 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; and
- 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.

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 set performance measures for the Office for 2011-12 relating to quantity, quality and timeliness. The summary below details the performance of this Office over the reporting period.

### 2.4.1. Quantity – Public Interest Disclosures received

#### Quantity remains high

During the first two years after establishment of the office in mid 2009, the number of disclosures far exceeded expectations. This year continued that trend, with a total of 70 disclosures examined during the current reporting period.

Performance Measure	Previous Year	Current Year		Targets
	2010-11 Actual	2011-12 Estimate	2011-12 Actual	2012-13 Estimate
Public interest disclosures	75	60	70	60

<sup>3</sup> no reports to the Minister have been made pursuant to section 32 of the Act.

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

### Performance outcome for 2011-12

The 70 disclosures handled during the reporting period included 46 new complaints, an 11% increase from 2010-11. The remaining 24 partly investigated disclosures were carried over from the previous year.

Quantity	September 2011 1 <sup>st</sup> Qtr	December 2011 2 <sup>nd</sup> Qtr	March 2012 3 <sup>rd</sup> Qtr	June 2012 4 <sup>th</sup> Qtr	As at 30/06/12
Public interest disclosures	36*	7	12	15	70

\* This figure is comprised of 24 partly investigated disclosures carried over from 2010-11 and 12 new disclosures received in the quarter ending September 2011.

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 continuing high workload the Office, with the financial backing of the Department of Justice, continued to employ a second investigator and also engaged several consultants to assist with specific investigations. Internal controls and improved processes significantly improved our performance in terms of timeliness.

#### 2.4.2. Timeliness – public interest disclosures resolved or reported

### Performance outcome for 2011-12

68% of the disclosures resolved during this reporting period were dealt with within a six-month timeframe compared with only 51% during 2010-11. This figure was achieved even though the office investigated several complex and time consuming matters including one which occupied one investigator for almost eight months.

Performance Measures		11-12 Estimate	11-12 Actual	12-13 Estimate
<b>Timeliness</b>	Disclosures resolved or investigation reports presented to the responsible authority within six months	70%	68%	70%

#### 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 six sitting days after receiving it.

#### 2.4.4. Quantity and quality – awareness and training

An important objective during the 2011-2012 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 11 face-to-face training sessions in 2011-12 in Darwin, Katherine, and Alice Springs, with a total of 133 participants;
- 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 323 separate training modules were successfully completed on the website over the reporting period; and
- informal advice provided by this Office 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		2011-2012 Estimate	2011-2012 Actual	2012-2013 Estimate
Quantity	Awareness and training			
	Face-to-face presentations	10	11	10
Quantity	Number of participants – including online training modules	400	456	400
Quality	Participant satisfaction	90%	91%	90%

Requests for presentations and training came from a variety of public bodies including government departments and municipal and shire councils. Although conducting investigations in a timely manner must remain our first priority, the more that people know and understand about 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.

Feedback from participants in the tailored face-to-face sessions was very positive. Online 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, including the introduction of proactive training with the development of a Corruption Prevention Training program and the modification of the website training modules.

#### 2.5. Reporting requirements under section 48 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 2011-12, this Office handled 70 disclosure complaints. Of these, 46 were new disclosures. Ten 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.) This is a pleasing increase on the two matters received from Chief Executives the previous year, no doubt a result of the education and training program.

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 79% 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:

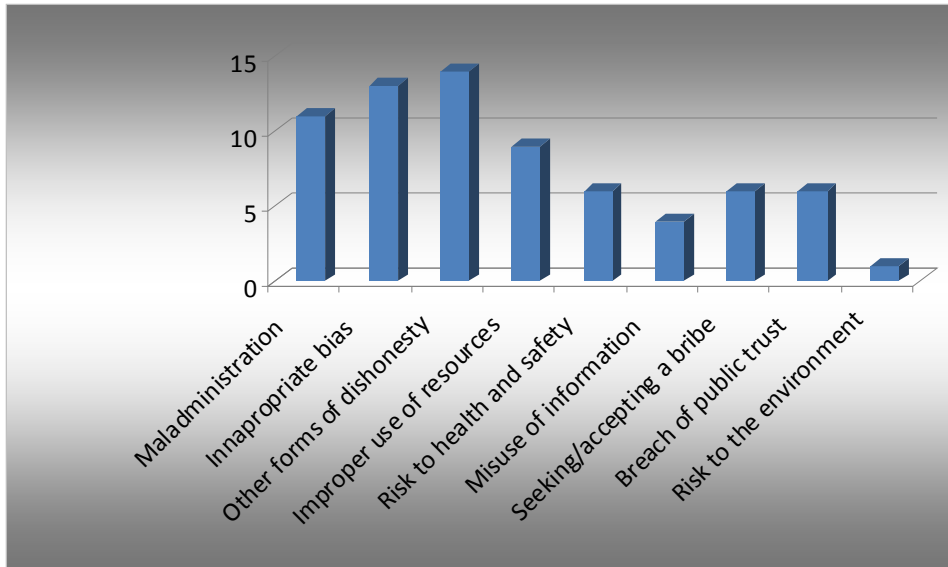
- substantial misuse or mismanagement of public resources
- substantial risk to public health or safety
- substantial risk to the environment
- substantial maladministration that specifically, substantially and adversely affects someone’s interests

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.

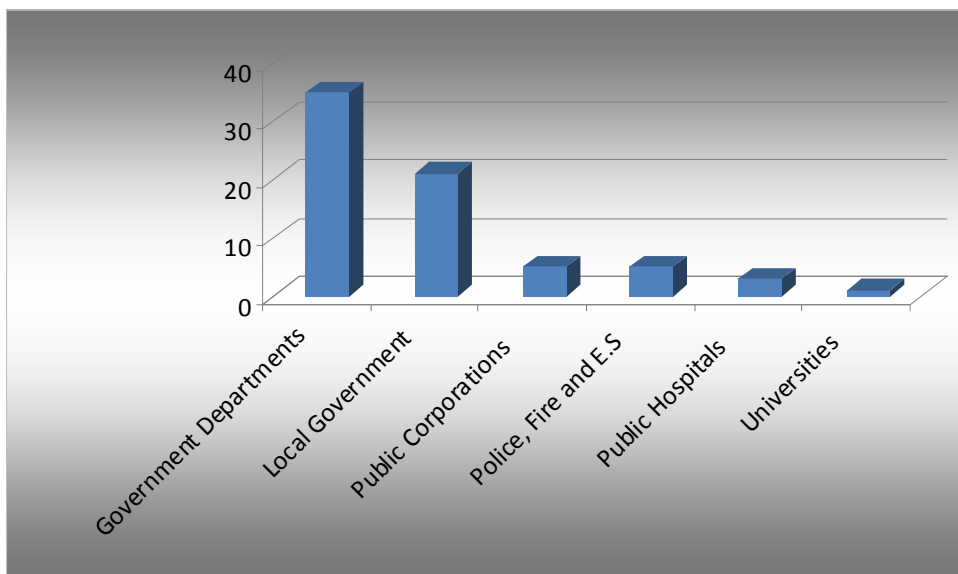
### Disclosures – by type

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



### Disclosures – by public body

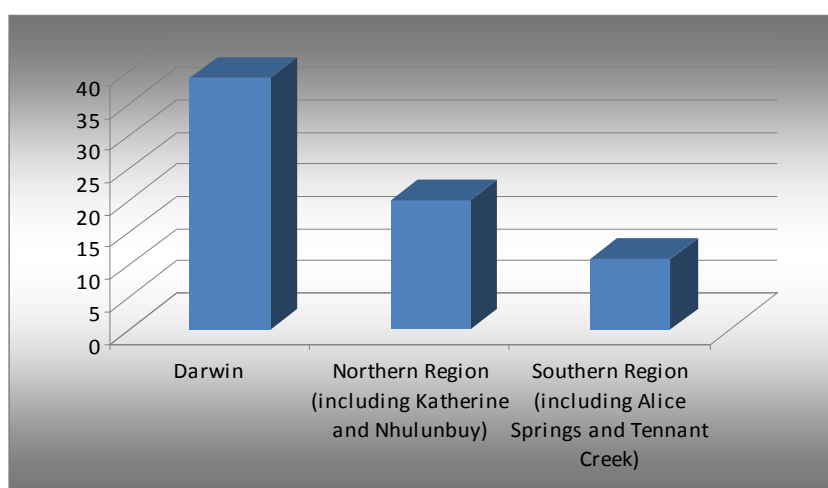
The diagram below provides a breakdown of the public bodies about which public interest disclosures were made. Public Corporations include those companies which are wholly owned by the NT Government, such as the Territory Insurance Office, Darwin Port Corporation, and Power-Water. Local Government includes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





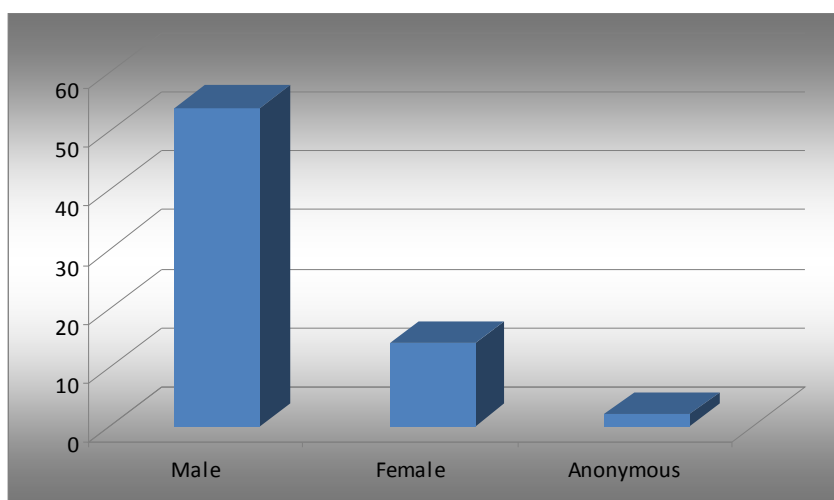
### Where are the allegations coming from?

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 Northern, rather than the Southern Region.



### Disclosure – by gender

Of the total number of disclosures handled during the reporting period, 77% were made by males, 20% by females, and 3% were anonymous complaints. Although initial enquiries are often made anonymously, most disclosers identify themselves once they feel it is safe to do so. 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.



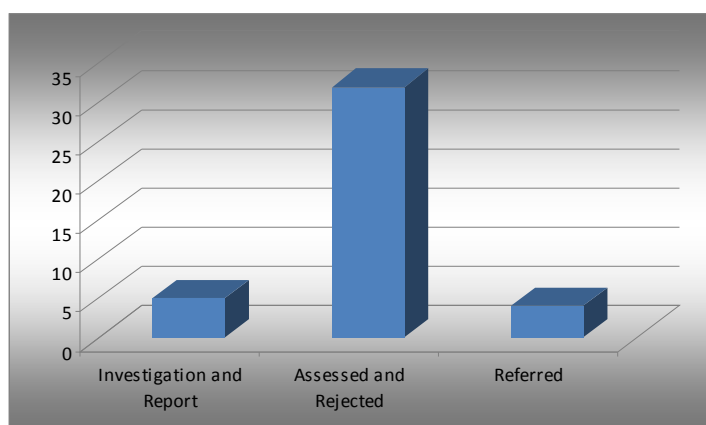
### 2.5.2. Public interest disclosures referred by the Speaker

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 2011-2012 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

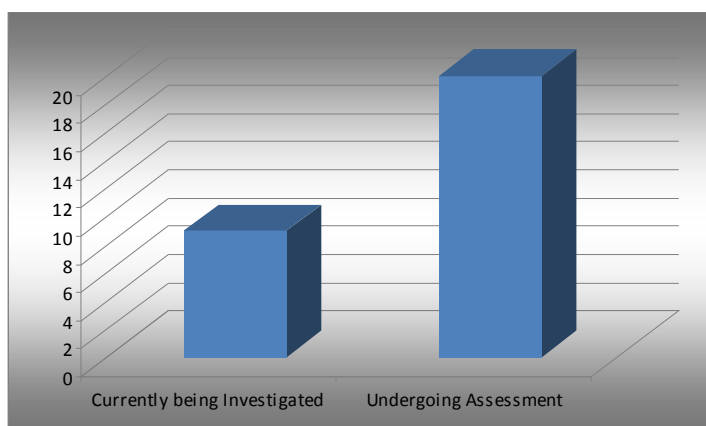
Of the total 41 disclosure files resolved during the reporting period:

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



Of the remaining 29 disclosures files current as at 30 June 2012:

- 20 are undergoing detailed assessment before a decision being made regarding their status; and
- 9 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, the Children's Commissioner 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:

- 1 matter to the Children's Commissioner; and
- 3 matters to the Commissioner for Public Employment.

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 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.

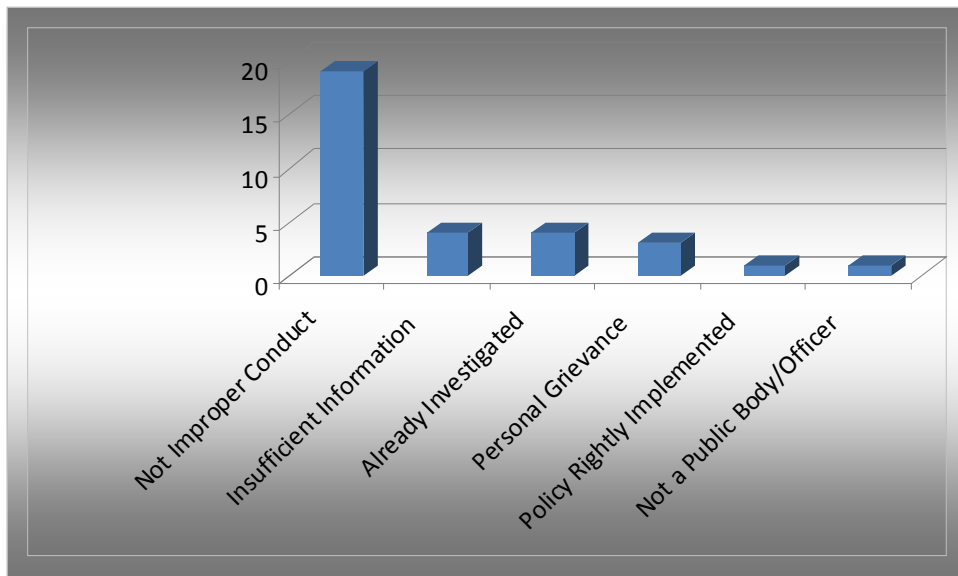
#### **2.5.5. Public interest disclosures not investigated**

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 32 disclosures ultimately rejected by the Commissioner:

- 59% were assessed as not involving improper conduct as defined by the Act;
- 13% were unable to be assessed due to insufficient information being provided or obtainable;
- 13% had already been adequately investigated;
- 9% were assessed as personal or employment related grievances;
- 3% were assessed as allegations about policy decisions of a public body or public officer that they were entitled to make; and
- 3% were outside the jurisdiction of this Office as the alleged improper conduct did not concern a public officer or public body.

These figures appear in a graph over the page.

### Public interest disclosures not investigated



#### 2.5.6. 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. Five such reports containing recommendations were made in the reporting period. It is noted that some disclosures contained several accusations of improper conduct and the de-identified examples below show some of the matters investigated by the office.

##### Matter 1

OCPID investigated an allegation that a nurse employed at a public hospital engaged in improper conduct in that she stole various prescription medication to self-medicate a debilitating condition and also supplied the medications to friends and relatives. Some of the medications were recovered, and it was established that they were part of a shipment purchased by the hospital.

The nurse resigned her position at the hospital prior to the commencement of disciplinary proceedings for personal reasons not related to the investigation. Investigations into similar allegations in other jurisdictions both within Australia and overseas have shown systemic problems of prescription drug theft. There is no suggestion that the security and control of the 'harder' drug types at the hospital needed reforming, however anecdotal evidence received from both current and former staff raised a concern that there may be a subculture amongst some nurses and other medical staff where the taking of 'lighter' drug types for their personal use was a right which came with the job.

The investigation further found the controls in place surrounding the security of lower level medications were lax and in need of improvement. The Chief

Executive was very proactive during the investigation and instituted his own enquiries, including conducting an anonymous survey of staff.

The survey results led to several recommendations including education of staff and managers on drug theft, increased security for certain drug types, and investigations into the establishment of a 'Wellness Clinic' for hospital personnel.

We commend the Chief Executive for his positive approach and his assistance in responding to concerns raised.

## **Matter 2**

OCPID investigated an allegation that a manager within a council had directed that fines issued by regulatory staff for offences such as parking and dog offences be withdrawn because the persons receiving the fines were council members or friends of council members. Further allegations investigated in this matter were that a relative of a senior council employee was employed within the council, despite having limited qualifications or experience.

After investigation it was found that some of the fines identified were withdrawn as per council policy however the receivers of other fines were directed to pay. Those fines withdrawn were clearly within the parameters of the 'withdrawal' policies, and not because of any relationship to council members. Examination of recruitment files relating to the individual in question showed that correct merit based recruitment procedures had taken place and the relative was not involved in the recruitment process.

## **Matter 3**

OCPID investigated several allegations that senior managers within a council were misusing council property and equipment, were showing inappropriate bias in the awarding of contracts, and were failing to follow the requirements of the *Local Government Act*.

Whilst it was shown that no criminal activity had taken place, the policies and procedures in place within council were of a very poor standard or non-existent. Financial mismanagement meant that the council was unable to effectively meet its responsibilities.

Recommendations for improvements to policy and process were made and implemented, and the Department of Housing, Local Government and Regional Services assisted the council to meet its obligations. Training for the public officers within the organisation has also been improved to educate against similar incidents occurring in the future.

## **Matter 4**

OCPID investigated an allegation that a public officer had released confidential information including pricing and specifications in relation to a tender for the provision of services to a potential tenderer prior to the release

of tender documents. It was further alleged that the public officer had accepted gifts and hospitality from competing firms over a number of years.

The investigation revealed that the officer had been the project manager and contact officer on a number of high value government projects and over time had become friends with many contractors and suppliers within the industry. This friendship included receiving hospitality, such as dinners and accommodation, and gifts such as entertainment and donations.

The investigation further revealed that the officer did release confidential information regarding an upcoming tender, and this information enabled the tenderer to win the contract. This behaviour has been reported to the Police Commissioner as contrary to the *Criminal Code Act* and is currently the subject of a Police investigation.

Disciplinary action was taken against the officer however he resigned prior to the completion of the investigation. The Commissioner made many recommendations for change within the organisation including changes to the end-to-end procurement process including supervision and training, the conflict of interest policy, the gifts and benefits policy, and the establishment of an Audit and Risk Committee. These recommendations are currently being implemented and the organisation is continuing to improve its processes.

This is another matter where the Chief Executive needs to be congratulated. In this case it was accepted that a problem existed within his organisation, and he displayed strong leadership and determination to implement changes to prevent similar incidents occurring in the future.

#### **Matter 5**

OCPID investigated an allegation that a public officer in a hospital unlawfully accessed confidential information regarding a sensitive medical procedure and subsequently released that information to friends and relatives of the patient.

After investigation it was found that the officer had not accessed any patient files, however did obtain that information from a list that was available to all staff. Hospital management agreed to restrict access to this document on a 'needs to know' basis, and to reiterate the confidentiality provisions within induction and training.

#### **Matter 6**

OCPID investigated an allegation that a council had reissued a long term lease on a property to a company whose sole director was a council member, even though an Audit Committee recommended that the process be by public tender.

The investigation revealed that council had debated this lease agreement for a number of years, finally agreeing to what was described as an excellent lease agreement for council. Whilst there did not appear to be any impropriety

on behalf of the council member involved, the Commissioner identified failings in the council's governance, management and support.

The Commissioner made recommendations for change to ensure the provision of ongoing training and support for elected members in corporate governance addressing in particular the Code of Conduct and conflict of interest issues. Further recommendations were made for the council to review the current processes for lease management oversight to ensure that the obligations placed on the council and lessees are complied with. The Chief Executive in this matter was very proactive in managing the changes required, continually updating the Commissioner on the progress and success of each element.

#### **Matter 7**

OCPID investigated an allegation that two public officers sought and accepted gifts of electrical appliances from a period contract holder to help furnish a new office.

The investigation revealed that the improper conduct had in fact occurred, with the officers requesting, and the contractor supplying, goods valued at over \$1,000.00 without submitting an invoice for payment. Both officers tendered their resignations during the investigation process.

The Commissioner made recommendations for change within the organisation in respect to the gifts and benefits policy and general training of staff relating to conflicts of interest. This matter formed a part of a referral to the Police Commissioner and is currently under investigation.

#### **Matter 8**

OCPID investigated allegations that public officers asked contractors to submit multiple invoices for the one job in order to subvert the tier levels of procurement. This practice, known as 'invoice splitting' enables the contractor to break up a large job into smaller invoices, meaning that only one quote is required to authorise payments, instead of having to go through the full procurement process.

The investigation revealed that this was a common practice and those involved justified their actions by saying that the work was done quicker and there was no cost to government. While the work may, in fact, have been completed more quickly, the lack of a competitive procurement process did not allow for the best 'value for money' process to be engaged.

The Commissioner recommended that controls be put in place to stop this action from recurring, and that the policies and procedures in the organisation be reviewed and strengthened. This matter formed a part of a referral to the Police Commissioner and is currently under investigation.

#### **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.



### 3. Other functions of the Commissioner for Public Interest Disclosures

#### 3.1. 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.

#### 3.2. 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.

## 4. Office of the Information Commissioner

### 4.1. 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 main objects of the Act 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.

In general terms, the Act is intended to ‘strike a balance between competing interests.’ It gives a person access to government information unless disclosure is not in the public interest.

### 4.2. Review of the Act

Section 160 of the Act provides that there is to be a review of the first five years of operation of this Act.

The Act commenced in 2003 and was due for review in 2008. The Office continues to provide support and information to the Department of Justice in order to facilitate their conduct of the review.

The national and international landscape has changed significantly since the *Information Act* commenced in 2003. Significant advances in technology have seen government information becoming increasingly electronic, and introduced new challenges such as regulating information stored in the virtual ‘cloud’. Increasingly, national reforms require sharing data between jurisdictions, and there are strong practical pressures for jurisdictions to more closely align their privacy provisions to facilitate a free but secure flow of information across borders. The Commonwealth and a number of jurisdictions have moved to a ‘push’ model for the release of government information, where more information is routinely published online and made freely available. The review of the *Information Act* will be an opportunity to consider these issues.

From a practical perspective, the current Act contains a number of ambiguities or idiosyncrasies in terms of its procedural components, and the Office looks forward to seeing these matters addressed to allow more effective case management of complaints. Review would also be beneficial to clarify a number of definitions under the Act.

### 4.3. Legislative amendments / reform

The *Information Act* was modified by a number of pieces of legislation in this reporting period, most notably by the *Care and Protection of Children Amendment (Information Sharing) Act 2012* (Act No. 9, 2012). This legislation was assented to on 27 April 2012 and commenced on 1 July 2012. It aims to promote greater information sharing by removing the rights of vulnerable children to seek confidential access to support services, including psychological assistance and medical assistance. Previously, obligations of confidence could only be overridden in situations where a child's health and safety was at risk. Now, those obligations no longer exist, and information can (and in some situations must) be shared for routine purposes such as developing child management plans. The Northern Territory is the only jurisdiction in Australia to remove the right of 16 and 17 year olds to confidentially access important health and protection services.

The Office was involved in early consultations in relation to these reforms, but was not part of the team that recommended the model which was ultimately adopted. The Office notes that some good education and communication tools have been prepared to facilitate better information sharing under the new model, but that over the long term there will need to be a lot of on-the-ground work and training to facilitate adoption of the new information sharing protocols, particularly in remote areas.

The *Serious Crime Control Act 2009* (Act No 32, 2009) also commenced during this reporting period. The origin of this Act was as an interstate measure to combat 'bikie gangs'. This Act inserted a new exemption (s 49AA) into the *Information Act* that allows the Commissioner of Police to refuse to provide access to government information on the grounds that it has been classified by the Commissioner of Police as 'criminal intelligence'.

The definition of criminal intelligence is broad, and includes information relating to actual or suspected criminal activity, where disclosure could reasonably be expected to:

- prejudice a criminal investigation;
- reveal a confidential source of information;
- endanger a person's life or physical safety;
- prejudice the effectiveness of police information-gathering or surveillance methods; or
- prejudice the effectiveness of police procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law.

While the Office supports a criminal intelligence exemption in principle, this particular exemption is extremely broad and not responsive to countervailing public interest considerations. Under this new exemption it appears that information about police corruption or a breach of human rights could not be released if it might reveal a confidential source of information, regardless of whether that source was a person actually in need of the protection of confidentiality.

It is noted that section 49AA has not been used to refuse access to any information to date, even though it commenced half way through the reporting period.

#### 4.4. Performance Measures

Performance measures for the Office are set out in Budget Paper No 3. The measures remained the same for the current reporting period, relating to quantity, timeliness and quality.

##### 4.4.1. Quantity – complaints and applications

Performance Measures		11-12 Estimate	11-12 Actual	12-13 Estimate
<b>Quantity</b>	Complaints & applications dealt with by the OIC			
	-FOI	25	24	20
	-Privacy	10	7	6

Full details of FOI complaints handled by this Office are reported in Part 6 and Appendix 2 of this report contains the statistics of FOI applications throughout the Northern Territory.

##### 4.4.2. Timeliness – resolving complaints within 12 months

Performance Measures		11-12 Estimate	11-12 Actual	12-13 Estimate <sup>5</sup>
<b>Timeliness</b>	Complaints finalised within 12 months			
	-FOI	50%	83%	15
	-Privacy	70%	40%	4

The Office does not always have a great deal of control over the timeframes within which complaints are finalised. For example some of the reasons for delays in finalising FOI complaints in the reporting period 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 huge number of documents; and
- complainants experiencing personal circumstances that require flexibility in timeframes.

<sup>5</sup> This measure will change for 2012-13 from a percentage of complaints finalised within 12 months to the number of complaints finalised during the reporting period.

The Office would like to see more comprehensive case management powers considered in the review of the Act, as this may assist in reducing delays.

In 2012-13, the timeliness measure will change from a percentage to number of complaints finalised for the sake of clarity.

#### 4.4.3. Quantity – training and awareness

Performance Measures		11-12 Estimate	11-12 Actual	12-13 Estimate
<b>Quantity</b>	Awareness and training presentations	20	17	20
	Number of participants	250	312	250

These figures include the training conducted by Megan Carter, Director of Information Consultants Pty Ltd, as this Office coordinates and supports her FOI training courses. Full details of training are in section 8.2.2 of this report.

#### 4.4.4. Quality – training and awareness

Performance Measures		11-12 Estimate	11-12 Actual	12-13 Estimate
<b>Quality</b>	Stakeholder satisfaction with performance	80%	85%	80%

Training participants and public sector organisations provide feedback following training sessions, policy advice and general enquiry services, ranking the quality of presentations on a five point scale. These results are then averaged and converted into a percentage.

There will be an additional performance measure for the period 2012-13 to indicate the number of hours this Office provides by way of policy advice and audits. Section 8.1 of this report provides details about policy advice and assistance to public sector organisations in the Northern Territory during the current reporting period.

## 5. FOI activity in the Northern Territory

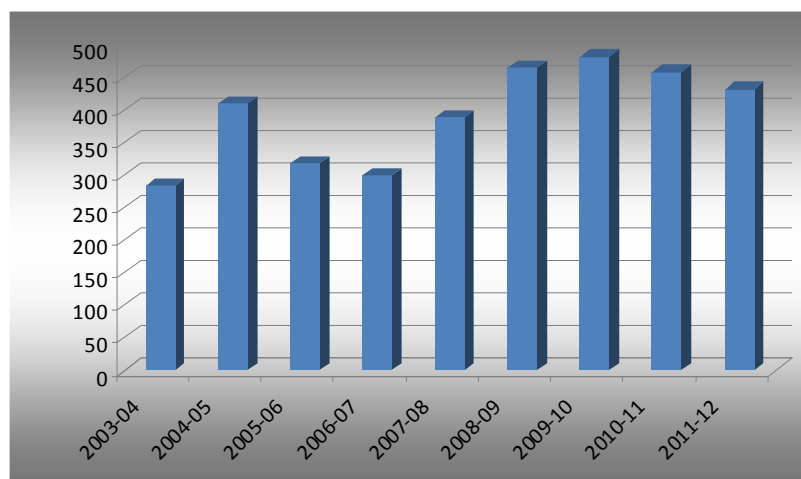
### 5.1. Reporting requirements under s98 of the *Information Act*

Section 98 of the Act requires that the annual report set out details of FOI activity for all public sector organisations across the Territory. This includes applications received, handled, accepted, transferred or withdrawn. Statistics relating to FOI activity are reported in full in Appendix 2.

### 5.2. The right to access information

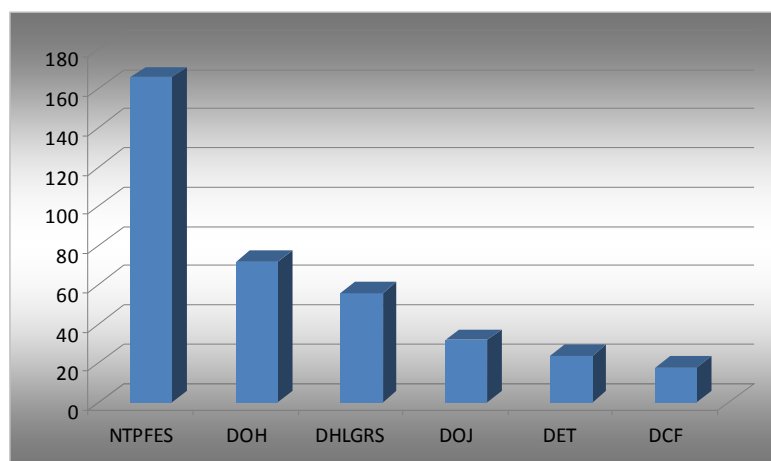
Twenty four organisations handled a total of 433 FOI applications during the year. As the following graph shows, the number of applications made to organisations has fluctuated annually since the commencement of the legislation in 2003, but has increased significantly over time.

**Number of applications handled over the years**



Certain organisations continue to attract and handle many more FOI applications than others.

**The organisations handling the largest number of FOI applications**



Six organisations handled 368 applications or 85% of the total number of FOI applications. Eighteen organisations handled the remaining 15% or 65 FOI applications, with two of the 18 organisations handling more than five applications each. See Appendix 2 for full statistical information.

### **5.3. Applications not accepted**

The number of applications not accepted by public sector organisations was lower this year with 22 applications not accepted compared to 38 applications in the previous year. Reasons for non-acceptance 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.

### **5.4. Applications withdrawn**

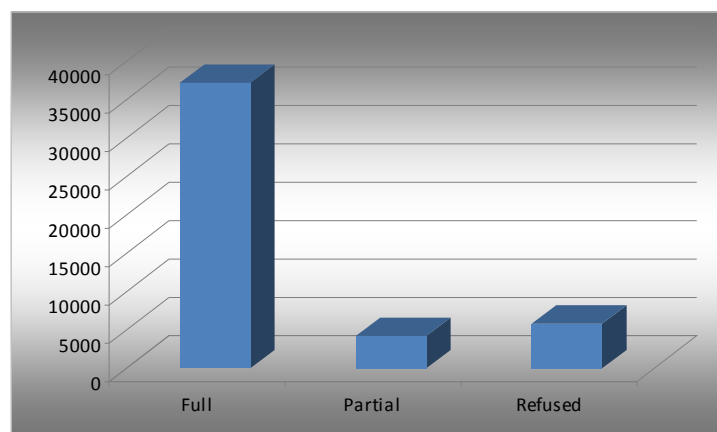
During the reporting period, 38 applications were lodged and later withdrawn by the applicant in comparison with 12 withdrawn applications in 2010-11 and 21 in 2009-10. Reasons for withdrawing an application could include:

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

### **5.5. Amount of information released**

During the reporting period, 345 applications were finalised, with the release of more than 37,000 pages of information released in full (30,000 in 2010-11 and 50,000 in 2009-10) and 4,300 pages in part (3,400 in 2010-11 and 5,400 in 2009-10).

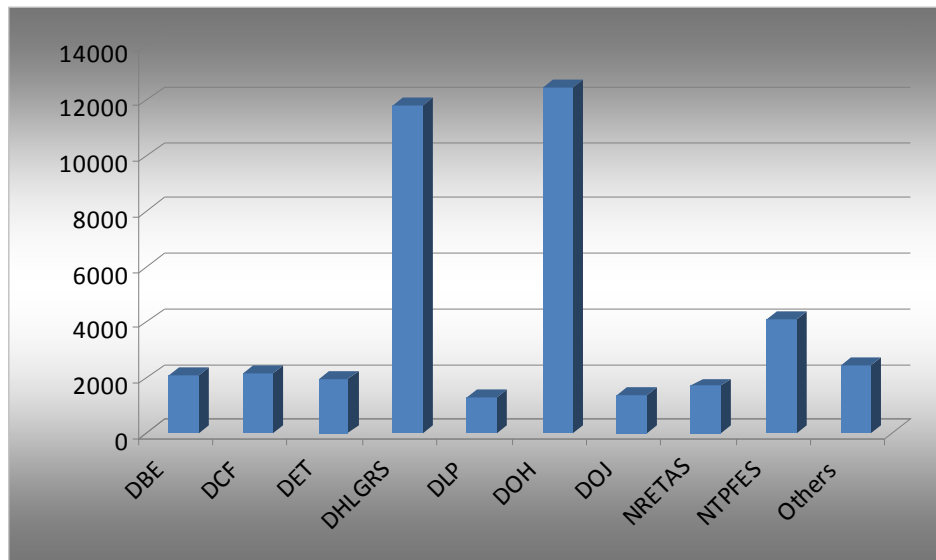
**Pages released 2011-12**



The Information Commissioner is pleased to see that most organisations continue to release a large proportion of the information requested in full or in part. Only a small proportion of pages, 12%, is refused in full.

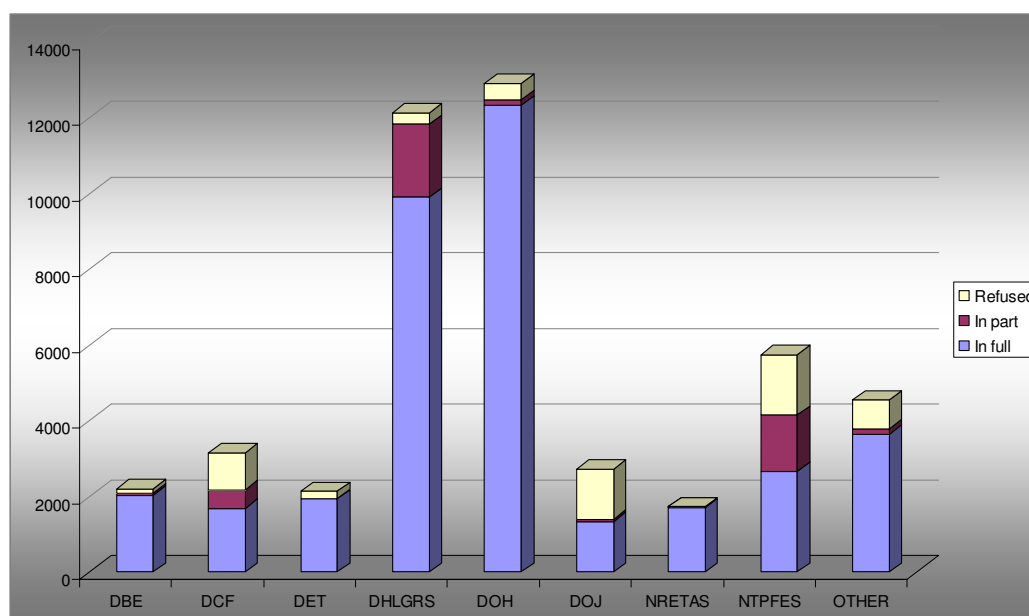
The following chart shows the extent to which different organisations contributed to the volume of information released to the public via the FOI process under the Act.

**Amount of information released 2011-12**



Some public sector organisations release a much greater proportion of the information requested from them (judged by page), as is shown in the following chart. It can be seen that Department of Children and Families (DCF), the Department of Justice (DOJ) and the Police (NTPFES) refused large proportions of the information requested, whereas the Department of Business and Employment (DBE), the Department of Education and Training (DET) and the Department of Natural Resources, Environment, the Arts and Sport (NRETAS) released most of the information requested.

**Pages considered and released in full / in part / refused by organisation in 2011-12**





It should be noted that these figures do not represent the total amount of information released to the public by organisations; only the information released through the FOI process under the *Information Act*. It does not include information published voluntarily or released through other processes. Caution should therefore be used when taking these statistics as an indication of an organisation's commitment to transparency. Also the analysis below shows that a significant proportion of the refusals by NTPFES, DHLGRS, and DCF were made in order to protect the privacy of third persons. This suggests the high level of refusals by these organisations relates significantly to the kind of information being requested rather than a culture of secrecy. Most of the pages of information refused by DOJ appear to have been applications for information about confidential investigations, which accounts for the high refusal rate for that organisation. Table 2 in Appendix 2 holds the numerical quantities of the pages released and refused by organisations.

## **5.6. Reasons for refusing to release information**

The most common reason for refusing access to information in 2011-12 was because the information was exempt (182 out of 219 refusals were for this reason). Of the remaining refusals, the most common reason was that the information did not exist (24 out of the remaining 37 refusals). Table 3 (in Appendix 2) shows the reasons organisations used for refusing to release information.

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 in detail which exemptions public sector organisations relied on for withholding some, or all, of the information on the pages reported in Table 2. (The total number of pages in this table exceeds the total number of pages where access was refused. This is because some pages were subject to more than one exemption, and so one page may contribute to the 'number of pages' figure for multiple exemptions.)

In 2011-12, the 'privacy exemption' (section 56), continues to be the most common reason for refusing access to information. This exemption allows an organisation to refuse access to information when granting access would unreasonably interfere with another person's privacy. It accounted for a large proportion of the pages where access was refused by NTPFES and DHLGRS. It should be noted that this exemption is often used merely to delete a home address or telephone number from a page, and does not typically represent an attempt to obscure information with a high public interest value.

The exemptions provided by sections 49A, 49B, and 49C protect the confidentiality of investigations conducted by independent 'watchdog' organisations such as the Ombudsman, the Health and Community Services Complaints Commissioner, the Auditor-General, the Public Interest Disclosure Commissioner, and independent boards of inquiry. Two of these bodies are located under the Department of Justice, which may account for that Department's particularly high use of this exemption. NTPFES has relied heavily on the exemption for Ombudsman's investigations, which is not unexpected because complaints about Police are investigated by the

Ombudsman in conjunction with the Police Ethical and Professional Standards Command, so NTPFES holds a substantial amount of information that is protected by that exemption.

The next most used exemption was section 48, which provides an exemption when disclosure of the information would be an offence. 96% of the pages which were not disclosed in reliance on this exemption were processed by the Department of Children and Families (DCF). DCF is notably responsible for information protected by secrecy provisions relating to child protection and adoption. Use of this exemption fluctuates annually, reflecting the extent to which this sort of information was sought from DCF or its predecessor the Department of Health and Families.

One notable decrease in 2011-12 has been the use of the 'Cabinet exemption' (section 45).

Table 4 in Appendix 2 has the details of the use of exemptions broken down by organisation and by exemption. The table below lists each section of the Act with the number of pages on which the exemptions were used for the past four years.

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

<b>Section</b>	<b>Exemption provision</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>
56(1)(a)	Unreasonable interference with a person's privacy	1,577	5,314	3,173	4,807
49A(a)	Obtained or created in the course of an investigation, audit or inquiry		199		1,320
49C(a)	Complaint under the <i>Ombudsman Act</i>		1,773		967
48	Secrecy provisions	624	2,039	29	733
49C(b)(iv)	Conduct of investigation under the <i>Ombudsman Act</i>				388
49C(b)(iii)	Conduct of Police complaints resolution process		1,634		386
57(1)(b)	Business, commercial or financial undertaking	146	438	722	262
57(1)(a)	A trade secret	146	33		228
55(3)	Communicated in confidence	55	219	13	220
49(d)	Legal professional privilege	88	230	185	168
49(c)	Matter before a court or tribunal	3	95	58	159
54(b)	Prejudice measures for public health or safety		1	6	157
52(1)(b)	Consultation/deliberation of public sector organisation		57	60	122

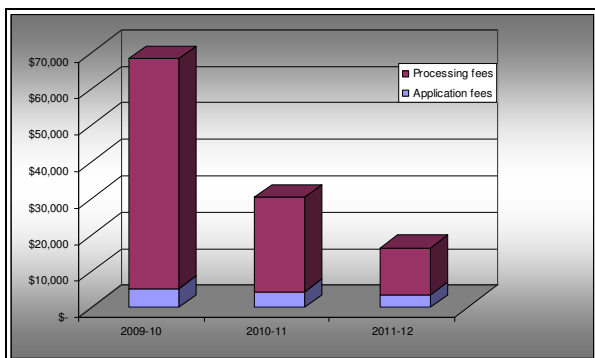
Section	Exemption provision	2008-09	2009-10	2010-11	2011-12
45(1)(a)(i)	Brought into existence for submission to an Executive body	390	551	472	105
45(1)(a)(iii)	Was considered by an Executive body	95	266	204	63
52(1)(a)	Deliberative processes	10	314	52	43
46(2)(b)	Disclose the identity of a confidential source in the context of unlawful conduct or law enforcement	8	104	10	1

### 5.7. Application and processing fees

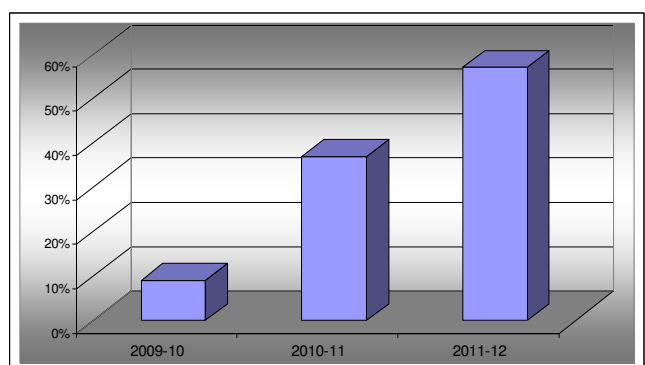
Organisations can charge for accepting and dealing with FOI applications in line with a fee structure set out in the Act and Regulations. They may also waive or reduce a fee payable if it is appropriate to do so having regard to the circumstances of the application, including the financial circumstances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

The bulk of fees charged are processing fees, and the Office is encouraged that organisations have continued the trend over the last few years of waiving more fees, a step which improves accessibility to government information. The total amount of fees charged continues to decrease, and the percentage of fees waived continues to increase.

**Total fees received over the last three years**



**Percentage of total potential fees waived**



## **5.8. 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.



Requests to correct personal information continue to be low. There was only one new application to correct personal information made in this reporting period (see Table 7 in Appendix 2).

## **5.9. 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.

Eighteen new applications for internal review were made during this period and four applications were carried over from 2010-11. One of the new applications was not accepted and one remained open at 30 June 2012, to be carried over into the next year. Of the 20 applications finalised, 11 confirmed the original decision, seven varied the original decision, and two revoked the original decision. The applicant obtained a better outcome in 40% of internal reviews. Table 5 (Appendix 2) details the review applications and how they were resolved.

## **5.10. Grants of Authorisation**

No new authorisations have been granted during the reporting period.

## **5.11. Exemption certificates**

In accordance with section 60 of the *Information 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.

The exemption certificate issued to Northern Territory Police by the Chief Minister on 24 February 2010 expired on 24 February 2012. A new exemption certificate was issued in identical terms on 23 February 2012 which expires on 23 February 2014.

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

It is noted that the ability to issue exemption certificates has been abolished by the Commonwealth, New South Wales and Queensland. These certificates were considered to act as a bar to someone seeking access to information and their abolition has been seen as an important step in achieving greater accountability in government decision making.

## 6. FOI complaints to the Information Commissioner

### 6.1. 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 their 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.



## 6.2. FOI complaints to the Commissioner in 2011-12

Ten FOI complaints were lodged during 2011-12 and 14 were carried over from 2010-11. A total of 24 FOI files were handled during the year, and 12 of these files were resolved, 10 through informal negotiation. Eight *prima facie* decisions were made and eight mediations were conducted.

Five complaints are currently listed for hearing and a total of 12 FOI complaints remain open at the end of the reporting period.

This table shows the number of FOI complaints and their outcome.

FOI Complaints to the Information Commissioner							
Respondent Organisation	Lodged	Not accepted	Resolved informally	Prima Facie	Mediation	Hearing	Open at end of year
DET	3 (2)		3				2
DOJ	0 (5)		3	4	5	2	2
DLP	0 (1)						1
NTPFES	6 (3)	1	3	4	3	3	5
SC	0 (2)		1		2	1	
TIO	0 (1)				1		1
ADC	1 (0)						1
<b>Total</b>	<b>10 (14)*</b>	<b>1</b>	<b>10</b>	<b>8</b>	<b>8</b>	<b>3</b>	<b>12</b>

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

## 6.3. FOI prima facie decisions delivered in 2011-12

The decisions summarised below are examples of investigations by the Office of the Information Commissioner into 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 respondent 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 prima facie decisions from previous years are published on our website [http://www.nt.gov.au/justice/infocomm/publications/pd\\_1.htm](http://www.nt.gov.au/justice/infocomm/publications/pd_1.htm) in the *Decisions and case notes* section.



### **Prima facie decision 1 – Correcting a Police Alert**

The complainant learned that an alert was held against his profile in the police database that suggested he was likely to make false complaints about persons of a particular residential complex. His view was that this information was inaccurate and he sought to have it corrected. NT Police took the view that the information was accurate and refused to correct it. The complainant complained to the Information Commissioner.

The alert had been added by two police members who had investigated when the complainant had contacted police to deal with an incident. The police members were contacted about the reasons why they added the alert, and stated that they had spoken to the alleged offenders in the incident, who convinced police that the complainant was the one 'actually causing the trouble'. The alleged offenders also said the complainant was a nuisance and constantly harassed them. One of the police members expressed the view that the alleged offenders were 'upstanding and good citizens'.

The decision maker found that this information lacked the factual detail needed to support the assertion that the complainant is likely to make false complaints. It was unremarkable for an alleged offender to dispute the account of an alleged victim, and police members did not identify any other reason for coming to the conclusion that the complainant had 'caused the trouble'. No particular details in the complainant's account were identified as being false. The fact that a person may be perceived by some persons to be a nuisance and harass people does not mean that the person is likely to make false complaints.

Police submitted evidence of a subsequent incident called in by the complainant and investigated by two different members. This was submitted as evidence that the alert was accurate, but primarily served to highlight the potentially problematic effect of placing such an alert on the police database. The members who investigated the second incident saw the alert and immediately formed the conclusion that the complainant was making another false complaint before doing anything more about the incident than speaking to the complainant. No facts to support this assessment of falsity were indicated other than a reference to the alert itself. The alleged offender was spoken to and denied the allegations and the investigation was then terminated.

Additional issues of procedural fairness arose in this case which also supported the need for the Information Commissioner to hear the matter.

The decision maker decided that there was sufficient prima facie evidence to support the complainant's contention that the alert was inaccurate and ought to be removed, although the accuracy of the alert was a question of fact that would need to be decided at hearing. An alert is not a kind of information that is for historical purposes only.

Following the prima facie decision, NT Police voluntarily removed the alert and the matter was resolved.



### **Prima facie decision 2 – Select Committee information requested**

The complainant applied to see a submission that was handed up to the Legislative Assembly's Select Committee on Youth Suicides in the Northern Territory in October 2011. Access was refused on the basis of section 54(a), which applies when releasing the information may pose a serious threat to the life or health of a person. The complainant then complained to the Information Commissioner.

The decision maker identified that the information was potentially subject to the parliamentary privilege provisions in section 49(e), and sought further information from the parties on this point. The respondent provided information that the Select Committee had restricted publication of the document sought and had not subsequently authorised its publication. Section 22 of the *Legislative Assembly (Powers and Privileges) Act* provides that it is an offence to disclose a document submitted to a committee unless the committee has authorised the publication of the document. The decision maker was also provided with a transcript of the relevant part of the Select Committee proceedings where the Chair restricted publication.

The complainant chose not to make any submissions on the topic of parliamentary privilege. The decision maker found that all available evidence unequivocally suggested the information in question was subject of parliamentary privilege. Consequently, the decision maker concluded that there was insufficient prima facie evidence to substantiate the matter complained of and dismissed the complaint.

### **Prima facie decision 3 – no decision by the respondent**

The complainant sought access to certain information that the organisation held about the complainant. The organisation made no original decision and no review decision because it claimed that it was too busy with other matters. The organisation therefore did not provide any reasons as to why the information should not be released to the applicant. The organisation was again invited to make submissions about the release of the information but it failed to do so.

The decision maker considered the objects of the Act which create a general right of access to information and the requirement that the Commissioner must have regard to the objects of the Act when performing her functions under the Act. The decision maker also noted the absence of any arguments from the organisation to explain why the information was exempt and consequently concluded that there was sufficient prima facie evidence to substantiate the complaint.

#### **6.4. Hearing decisions delivered in 2011-12**

One hearing decision was handed down in 2011-12. In this matter, a organisation refused to provide access to a workplace conflict assessment report on the grounds that it was exempt because:

- the report contained information that was of a deliberative nature (s52);
- disclosure of the report would have a substantial adverse effect on management and the conduct of industrial relations in the organisation (s53(c) and (d));
- disclosure of the report would pose a serious threat to the life or health of certain employees or would prejudice measures for the protection of the health or safety of the public (54(a) and (b));
- employees were told that the report would be kept confidential (s55); and
- disclosure of the information would be an unreasonable interference the privacy of certain employees (s56).

The hearing Commissioner found that none of the exemptions claimed could be supported on the evidence provided by the respondent. The Commissioner ordered that the entire report be disclosed to the complainant.

## 7. 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.

The Office provides privacy advice to individuals and organisations, and investigates complaints by individuals when they believe that a public sector organisation has breached their privacy.

### 7.1. Privacy activity in 2011-12

The Office of the Information Commissioner has continued to work with organisations to assist in the development of privacy-friendly legislation, policies, and procedures. Most of the 636 hours of policy assistance and advice provided by the office in 2011-12 was privacy-related advice, and further detail on the range of topics advised on is detailed in part 8.1 of this report.

### 7.2. Privacy complaints in 2011-12

A person who believes that their privacy has been breached is required to give the organisation that allegedly breached their privacy a reasonable opportunity to address their concerns. If they are dissatisfied with the organisation's response, they may lodge a complaint to the Commissioner. This year the Office handled seven privacy complaints. Most were resolved at an early stage via mediation or informal negotiations.

If the parties do not resolve matters between themselves, the Information Commissioner must conduct mediation. If no resolution is reached, a hearing takes place at which binding orders may be made and one privacy matter was referred to hearing during the reporting period.

### 7.3. Privacy complaints in 2011-12

Privacy Complaints to the Information Commissioner							
Respondent Organisation	Lodged	Not accepted	Resolved Informally	Prima Facie	Mediation	Hearing	Open at end of year
DOH	1 (1)	1	1	1	1		
DOJ	2 (0)	1					1
NTPFES	(2)		1		1	1	1
TIO	(1)		1	1	1		
<b>TOTAL</b>	<b>3 (4)*</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>2</b>

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

## 8. Other functions of the Information Commissioner

### 8.1. 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. The Office is required to examine and assess proposed legislation for relevant FOI or privacy issues. During the year the Office provided comments on 16 Cabinet Submissions that raised potential privacy issues.

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 636 hours of policy assistance and advice. Most enquiries and requests for advice were from government agencies rather than from members of the public. The Office provided advice on a variety of topics including:

- information sharing agreements between organisations;
- SA-NT Datalink project;
- national regulatory schemes which handle personal information;
- e-health proposals;
- cloud computing and mobile device privacy issues;
- managing privacy obligations in emergency situations;
- privacy obligations of contract service providers;
- de-identifying personal information for statistics and research;
- health information from third parties;
- the use of electronic tools to track personal and sensitive information online;
- access to health files and patient notes;
- release of information for secondary purposes;
- access to information containing nominations for awards;
- assistance with the design or review of privacy statements for electronic or paper media publication;
- disclosure of information to Commonwealth Government organisations;
- internal reviews under the Act in general and officers conducting such reviews specifically;
- breaches of Banning Alcohol and Treatment (“BAT”) notices; and
- amending personal information on personnel files.

The Office also provided advice on the following projects:

#### **Privacy protection in emergency situations**

Public sector organisations in the Northern Territory hold a large amount of information relating to individuals. The sharing of this information is likely to be crucial should an emergency or disaster occur. The *Information Act* permits the sharing of information in a number of

circumstances but the Act may not permit officers to appropriately share information during, or in the aftermath of, an emergency.

The Office has recommended an amendment to clarify the circumstances in which officers can collect, use and disclose essential information in an emergency. In the interim, a draft guideline has been prepared to ensure that Information Officers are aware of the situations under the current law in which information can and should be disclosed in an emergency. The guideline also provides guidance on establishing appropriate emergency information sharing protocols and procedures in preparation for a possible emergency.



### **SA NT DataLink**

The SA NT DataLink is a recently established joint venture between the Northern Territory Government, South Australian Government and academic institutions that will enable valuable data that is routinely collected to be made available to researchers so that it can be used in areas of social and government planning. It will influence future directions in key areas of research, particularly in the fields of health and education.

The Office has been working with key staff members from SA NT DataLink to ensure that privacy issues are properly considered in the development and implementation of this research tool and continued to provide advice in relation to the SA NT DataLink Agreement.

### **The reduction of anti-social behaviour in and around city night clubs.**

The Office participated in the re-established Mitchell Street Working Party. The Working Party aims to establish strategies designed to reduce the amount of anti-social behaviour in and around city night clubs and to generally improve public safety. Many of the strategies, such as CCTV coverage of hotspots and the electronic scanning of identity documents have significant privacy implications. Staff offered advice on how to best achieve their goals while still complying with privacy requirements.

## **8.2. Awareness about FOI and privacy**

Informing the community about rights and obligations under the *Information Act* is an important task for the Office. The promotion of FOI and privacy takes place through the following:

- responding to general inquiries and formal requests for advice;
- developing and/or delivering training sessions for public sector employees;
- 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.

### **8.2.1. General enquiries**

During 2011-12 the Office responded to 349 enquiries, with 95% of people receiving a response on the same day or within 24 hours. It is not always possible to respond within 24 hours because the response may require research, liaison with other organisations or lengthy policy advice.

Most people make enquiries by telephone on 8999 1500 or 1800 005 610 or by e-mail [infocomm@nt.gov.au](mailto:infocomm@nt.gov.au).

### **8.2.2. Presentations, forums and promotions**

The Office conducted twelve education sessions throughout the year, facilitated three formal FOI training courses, and participated in two displays about FOI and privacy for the general community and one information sharing forum. They included:

- a session organised by the Institute of Public Administration Australia and the Young Professionals Network at which our Office spoke on the topic: “Representing the public interest”;
- a “Know your Rights Expo” community information day;
- a presentation by Professor John McMillan, the Federal Australian Information Commissioner, on Information Law Reform – the National Agenda. Professor McMillan spoke on the new open government themes of:
  - giving public access to government documents upon request;
  - establishing a pro-disclosure culture through proactive web-publication of public sector information; and
  - civic engagement and collaboration.
- three training sessions by Megan Carter;
- an Information Officers’ Forum which examined:
  - privacy and major disasters;
  - the developments on the privacy and FOI agendas of the Pacific region and nationally;

- concerns about the COAG national regulatory reforms and how these are having an impact on the regulation of FOI, privacy and record keeping;
- Privacy Awareness Week ;
- an overview of records management guidelines from the Department of Business and Employment; and
- a presentation on case law & definitions in the *Information Act*.

During the reporting period, 312 people attended the 17 sessions and activities organised by the Office. Feedback about training is generally very positive, with the majority of attendees reporting that the sessions are informative and useful in their daily work. A sample of some 15% of attendees completed an evaluation form, and feedback provided an average rating of sessions as falling between 'good' and 'excellent'.

### **8.2.3. Guidelines**

The Office produces guidelines to help people understand and interpret the *Information Act* as it relates to certain provisions of the 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.

Current guidelines are available for printing from our website or on request [http://www.nt.gov.au/justice/infocomm/publications/pd\\_2.htm](http://www.nt.gov.au/justice/infocomm/publications/pd_2.htm).

### **8.2.4. Website**

The Office website [www.infocomm.nt.gov.au](http://www.infocomm.nt.gov.au) is designed for Information Officers and the general 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.



This year, the website received 398,098 page views, and was viewed by 7372 unique visitors. The peak month of website viewing was May 2012, which was the month the Information Commissioner was particularly publicising Privacy Awareness Week. The webpage dedicated to Privacy Awareness Week received 1200 page views between 1 April 2012 and 30 June 2012 by 40 unique visitors. The webpage containing our published decisions and case notes received 5284 views in the 2011-12 financial year, and was viewed by 501 unique visitors.



### 8.2.5. 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. PAW has been held during the first week of May for the last four years



Resources and planning for the event are shared between APPA members, allowing for superior promotional materials for all APPA members than each jurisdiction would otherwise be able to produce. In December 2011, an APPA media release announced the results of the survey “privacy and social networking”, which was held across the Asia Pacific region to celebrate PAW in 2011. the results of the survey are published on the PAW website at [http://privacyawarenessweek.org/2011/survey\\_media\\_release.html](http://privacyawarenessweek.org/2011/survey_media_release.html).

PAW 2012 was celebrated from 29 April to 5 May. The joint APPA promotional product was a resource list for youth, in five languages. It is published on: <http://www.privacyawarenessweek.org/youth.html#english>.

The Office of the Victorian Privacy Commissioner produced a poster to promote this resource for PAW 2012 and invited other jurisdictions to freely use the poster as “shareware”.



Small jurisdictions like the Northern Territory particularly benefit from the cooperative approach of the larger privacy offices and, with permission and assistance, adapted the poster with the inclusion of the logo of the NT Office of the Information Commissioner and the airG logo which appears to be most popular among NT youth.

In addition to the youth theme of PAW 2012, this Office focused on senior citizens and was permitted by New Zealand to adapt a set of five cards from to suit Territorians. The cards are available from this office on request, or can be printed from the website

[http://www.infocomm.nt.gov.au/privacy/archive\\_privacyawareness.htm](http://www.infocomm.nt.gov.au/privacy/archive_privacyawareness.htm)



The Office celebrated the start of PAW 2012 with a full-page feature article on the risks for children and young people on line in the Sunday Territorian of 29 April 2012. The Office also sent a letter to the CEOs of all NT public sector organisations about their obligations under the Act and emailed a privacy tip each day of PAW week to Information Officers throughout the NT. The privacy tips were also assembled into a desk card which was freely distributed.

All PAW 2012 promotional materials are published on our website: [http://www.infocomm.nt.gov.au/privacy/archive\\_privacyawareness.htm](http://www.infocomm.nt.gov.au/privacy/archive_privacyawareness.htm) or can be made available in hard copy on request.

### **8.3. 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 the protection of privacy.

### **8.4. Staying informed of developments in FOI and privacy**

Officers are required to stay abreast of developments in FOI and Privacy. During the year, the Office attended the following events:

- The 33<sup>rd</sup> International Conference of Data Protection and Privacy Commissioners. The Conference a wide range on speakers and topics discussed included:
  - third party accountability agents as extenders of enforcement agencies;
  - data protection and defining personal information;
  - security in an insecure world;
  - privacy responsibility in cloud computing;
  - data protection resource allocation in an age of big data and globalization; and
  - the growing role of technologists in data protection authorities.
- Two meetings of the Asia Pacific Privacy Authorities (APPA). Discussions included:
  - the difficulties faced when regulating privacy breaches and encouraging community awareness with limited resources and the benefits of collaboration;

- importance of encouraging cross border regulation of privacy breaches;
- the pros and cons of cloud computing and the need to ensure that the public and stakeholders are aware of the risks;
- the unprecedented emergence of many and varied phone applications and the lack of privacy protections built in to many of them; and
- privacy by design which focuses on the importance of ensuring that privacy protections are embedded in the design rather than being added as an afterthought.

A communiqué is published on the APPA website after each forum with a photograph of the participants and a summary of the main topics raised and the issues of concern to APPA members <http://www.privacy.gov.au/aboutus/international/appa>.

- A meeting of the Australian Information Access Commissioners, which included a Policy Conference. Discussions included:
  - the cultural transformation underway in jurisdictions that had adopted the 'push' model where the presumption is that government information will be released unless there is good reason to withhold it.

## **8.5. 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 those sections of Part 9 that relate to Records Management and the Department of Natural Resources, Environment, the Arts and Sport is responsible for those sections of Part 9 that relate 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.

The Information Communications Technology (ICT) Policy and Strategy Unit in the Department of Business and Employment is responsible for providing guidance to organisations about records management. During the year, staff from the Unit worked closely with the Office on the development of guidelines about cloud computing and working with contract service providers. The Office is currently part of a steering committee to oversee a review of the NT Government's existing records management system, TRIM.

# Appendices

## Appendix 1

### OFFICE OF THE COMMISSIONER, INFORMATION AND PUBLIC INTEREST DISCLOSURES

#### Statement of Financial Performance For the year ended 30th June 2012

	\$ \$'000	\$ \$'000
<b>INCOME</b>		
Appropriation - Output		618
Goods and Services Received Free of Charge		59
<b>TOTAL INCOME</b>		<u>677</u>
<b>EXPENSES</b>		
Employee Expenses		735
<i>Administrative Expenses</i>		
Repairs and Maintenance		0
Purchase of Goods and Service*		156
Property Management	5	
Accommodation	5	
Communications	15	
Power	2	
Consumables / General Expenses	4	
Document Production	1	
Information Technology Charges	26	
Artwork	1	
IT Hardware and Software Expenses	1	
Legal Expenses	38	
Library Services	2	
Marketing & Promotion	4	
Membership Subscription	5	
Motor Vehicle Expenses	17	
Office Requisites and Stationery	0	
Official Duty Fares	6	
Other Equipment Expenses	11	
Training and Study Expenses	11	
Travelling Allowances	2	
Depreciation		3
DBE Services Free of Charge		59
<b>TOTAL EXPENSES</b>		<u>953</u>
<b>NET SURPLUS / (DEFICIT)</b>		<u>(276)</u>

## 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 2011-12:

- **Table 1** Overview of FOI access applications
- **Table 2** Access overview - access granted in full, in part, or access 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 (ORGANISATIONS) referred to in the tables below, in the order they appear in the tables:

AAPA	Aboriginal Areas Protection Authority
ADC	Anti-Discrimination Commission
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
OCM	Office of the Chief Minister
OCPE	Office of the Commissioner for Public Employment
TNT	Tourism NT
CDU	Charles Darwin University
TRB	Teacher Registration Board
DCC	Darwin City Council

The information recorded in Tables 1-7 was submitted by NT public sector organisations through a statistical return completed at the end of the reporting period. The Office appreciates the co-operation of FOI and privacy administrators within public sector 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 year's end
AAPA	1	1	1					
ADC	4	4	4					
DBE	2 (1)	3	3					
DCF	15 (3)	18	17				1	
DCI	3 (1)	4	3			1		
DCM	7 (3)	10	7			2	1	
DET	22 (2)	24	20			1		3
DHLGRS	55 (1)	56	51				5	
DLA	1 (1)	2	2					
DLP	14 (2)	16	4	6 <sup>6</sup>	1		5	
DOH	66 (6 <sup>7</sup> )	72	63	3	3			3
DOJ	29 (3)	32	26				2	4
DOR	4 (1)	5	4				1	
NRETAS	2	2	2					
NTAGO	(1)	1	1					
NTEC	(1)	1	1					
NTPFES	153 (13 <sup>8</sup> )	166	122	12		1	23	8
NTT	2 (1)	3	3					
OCM	2	2	2					
OCPE	(1)	1	1					
TNT	2	2	2					
CDU	2	2	1	1				
TRB	1 (1)	2	1					1
DCC	4	4	4					
<b>TOTALS</b>	<b>391 (42<sup>9</sup>)</b>	<b>433</b>	<b>345</b>	<b>22</b>	<b>4</b>	<b>5</b>	<b>38</b>	<b>19</b>

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

<sup>6</sup> These six applications were dealt with under the Administrative Access Scheme.

<sup>7</sup> DOH reported 3 outstanding access applications at the end of 2010-11 but advised that 6 was the correct figure with which to start 2011-12

<sup>8</sup> NTPFES reported 15 outstanding access applications at the end of 2010-11 but advised that 13 was the correct figure with which to start 2011-12

<sup>9</sup> This figure has increased from 41 (last year's reported total) to 42 to accommodate the adjustments in the DOH figure (3 more than reported) and NTPFES (2 less than reported) as outlined in footnotes 2 and 3 respectively.

**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 withheld in full. The table shows the number of applications and the number of pages.

Table /PSO	2	granted in full	granted in part	refused in full		pages in full	pages in part	refused in full
AAPA		0	1	0		61	2	4
ADC		3	0	1		6	0	0 <sup>10</sup>
DBE		2	1	0		2034	48	117
DCF		3	11	3		1695	479	983
DCI		0	2	1		119	16	468
DCM		1	5	1		731	46	77
DET		8	11	1		1930	21	180
DHLGRS		7	41	3		9910	1930	294
DLA			2			116	0	29
DLP		1	2	1		1275	27	33
DOH		56	6	1		12,350	136	427
DOJ		12	4	10		1347	53	1323
DOR		3	0	1		281	0	0
NRETAS		0	2	0		1702	4	26
NTAGO		1	0	0		1	0	0
NTEC		1	0	0		66	0	0
NTPFES		28	74	20		2668 <sup>11</sup>	1478	1610
NTT		0	2	1		415	1	1
OCM		0	0	2		0	0	1 <sup>12</sup>
OCPE		1	0	0		71	0	0
TNT		2	0	0		247	0	0
CDU		1	0	0		1	0	0
TRB		0	1	0		239	55	153
DCC		1	3	0		6	9	0
<b>TOTAL</b>		<b>131</b>	<b>168</b>	<b>46</b>		<b>37,271</b>	<b>4,305</b>	<b>5,726</b>

<sup>10</sup> Number of pages were not counted because the application was a deemed refusal.

<sup>11</sup> In addition to the number of pages released in full, NTPFES released 11 GB of electronic documents.

<sup>12</sup> Information for one of the two applications refused in full was not retrieved / counted because it was exempt under s 49(e). The number recorded represents a document, as the pages were not counted.

**Table 3 – Reasons for refusal**

This table records the reasons for refusal for those public sector organisations where applications to access information were refused in full or in part. In any one application, access to information may be refused for one or more reasons.

Table 3 /PSO	exempt	publicly available	does not exist	cannot find	cannot identify	unreasonable interference	not covered	deemed refusal
AAPA	1							
ADC			3					1
DBE	1							
DCF	12		2					
DCI	1		1				1 <sup>13</sup>	
DCM	5		1					
DET	12		1					
DHLGRS	42		2					
DLA	2							
DLP	1					1	1	
DOH	6			1				
DOJ	9	1	4		1			
DOR			1					
NRETAS	2							
NTAGO	0							
NTEC	0							
NTPFES	80		8					6
NTT	3							
OCM	1		1					
OCPE	0							
TNT	0							
CDU	0							
TRB	1							
DCC	3							
<b>TOTAL</b>	<b>182</b>	<b>1</b>	<b>24</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>7</b>

<sup>13</sup> This refers to information held by the part of DCI that is a Government Business Division (section 5(3)(b) of the *Information Act*).



## **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 Government Business Divisions are exempted under section.5(3) and 5(4) of the Act for non-personal information
- s.45 Executive Council, Cabinet, Territory economy
- s.46 Security and law enforcement
- s.47 Corresponding FOI laws
- s.48 Secrecy provisions
- s.49 Preservation of system of justice
- s.49A Information obtained or created because of investigation
- s.49C information under *Ombudsman Act*
- s.51 Inter-governmental relations
- s.52 Deliberative processes
- s.53 Effective operations of public sector organisations
- s.54 Health, safety, environment and place of significance
- s.55 Confidentiality obligations, confidential sources
- s.56 Privacy and cultural information
- s.57 Commercial and business information

Table 4 is spread over two pages, with the 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>14</sup>**

Table 4 /PSO	s.5 (4) <sup>15</sup>	45(1) (a)(i)	45(1) (a)(ii)	45(1) (a)(iii)	45(1) (a)(iv)	45(1) (a)(v)	45(1) (a)(vi)	45(1) (a)(vii)	46 (1)(a)	46 (2)(a)	46 (2)(b)	46 (2)(c)	47	48	49(a)	49(b)	49(c)	49(d)	49(e)	49A (a)
AAPA																				
ADC																				
DBE			25		3															
DCF		12	4								1			702			4	12		
DCI	484																			
DCM		59		59	59	59			6			14					4			
DET																		79		
DHLGRS		9	2											1	8			6		
DLA												1						25		
DLP	51																5			
DOH		2	8	4		2	2	3	48				2	28		1	122	34		
DOJ																				1,320
DOR																				
NRETAS		23																4		
NTAGO																				
NTEC																				
NTPFES										35							24			
NTT														2						
OCM																			1	
OCPE																				
TNT																				
CDU																				
TRB																		8		
DCC																				
<b>TOTAL</b>	<b>535</b>	<b>105</b>	<b>39</b>	<b>63</b>	<b>62</b>	<b>61</b>	<b>2</b>	<b>3</b>	<b>54</b>	<b>35</b>	<b>1</b>	<b>15</b>	<b>2</b>	<b>733</b>	<b>8</b>	<b>1</b>	<b>159</b>	<b>168</b>	<b>1</b>	<b>1,320</b>

<sup>14</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.

<sup>15</sup> This exemption is mentioned because the pages noted here also contained some information that was not related to the Government Business Divisions of DCI & DLP

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

Table 4 cont	49A (b)(iii)	49A (b)(iv)	49C (a)	49C (b)(iii)	49C (b)(iv)	51	52 (1)(a)	52 (1)(b)	53 (a)	53 (c)	53 (d)	54 (a)	54 (b)	54 (d)	55 (1)	55 (3)	56 (1)(a)	56 (1)(b)	57 (1)(a)	57 (1)(b)	57 (3)(b)	TOTAL
AAPA																	2			4		6
ADC																						
DBE							5												124	7		164
DCF							1	91							11	193	431					1,462
DCI	3																					487
DCM														2			16			4	18	300
DET																	122					201
DHLGRS						5	29	4	1							27	1,853		100	184		2229
DLA															1		2					29
DLP							2										2					60
DOH		9			2			5		23	11		57		1		155	11	1	50		581
DOJ													100		5		75					1,500
DOR																						
NRETAS																			3			30
NTAGO																						
NTEC																						
NTPFES			967	386	386							8					2041			13		3860
NTT																	1					3
OCM																						1
OCPE																						
TNT																						
CDU																						
TRB							6	22		10					55		107					208
DCC															9							9
<b>TOTAL</b>	<b>3</b>	<b>9</b>	<b>967</b>	<b>386</b>	<b>388</b>	<b>5</b>	<b>43</b>	<b>122</b>	<b>1</b>	<b>33</b>	<b>11</b>	<b>8</b>	<b>157</b>	<b>2</b>	<b>82</b>	<b>220</b>	<b>4,807</b>	<b>11</b>	<b>228</b>	<b>262</b>	<b>18</b>	<b>11,130</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>	<b>Lodged*</b>	<b>open at year's end</b>	<b>finalised</b>	<b>not accepted</b>	<b>decision confirmed</b>	<b>decision varied</b>	<b>decision revoked</b>	<b>better outcome</b>
AAPA								
ADC	4		3	1	3			
DBE								
DCF	1		1			1		1 <sup>16</sup>
DCI	1		1		1			
DCM	1		1			1		1
DET	3		3		2	1		1
DHLGRS								
DLA	1		1			1		1
DLP	(1)		1		1			
DOH								
DOJ	(2)		2			2		2
DOR								
NRETAS								
NTAGO								
NTEC								
NTPFES	6 (1)	1	6		3	1	2	2 <sup>17</sup>
NTT	1		1		1			
OCM								
OCPE								
TNT								
CDU								
TRB								
DCC								
<b>TOTAL</b>	<b>18 (4)</b>	<b>1</b>	<b>20</b>	<b>1</b>	<b>11</b>	<b>7</b>	<b>2</b>	<b>8</b>

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

<sup>16</sup> Additional information was released in this instance, with the reviewer relying on the following additional exemptions: sections 49(d); 52(1)(a); 53(1)(b); 55(3)(a); 55(3)(b)(ii); and 56(1)(a).

<sup>17</sup> In these decisions, the reviewer relied on sections 54(a) and 56(1)(a) to improve the result in one or both of these applications..

**Table 6 – Fees charged / Fees waived or reduced**

This table records the fees received 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.

<b>Table 6 /PSO</b>	<b>Application fees received</b>	<b>Processing fees received</b>	<b>Total charged</b>	<b>Application fees reduced</b>	<b>Processing fees reduced</b>	<b>Total reduced</b>
AAPA	30.00		30.00			
ADC						
DBE	60.00		60.00			
DCF	60.00	830.75	890.75	60.00	3,628.35	3,688.35
DCI	60.00	299.00	359.00			
DCM	210.00	1,033.00	1,243.00			
DET	120.00		120.00	30.00		30.00
DHLGRS	360.00	765.00	1,125.00	60.00	3,628.35	3,688.35
DLA	60.00	562.07				
DLP	210.00	552.00	762.00			
DOH	564.40	6,899.31	7,463.71	485.60	7,414.00	7,899.60
DOJ	180.00		180.00	30.00		30.00
DOR	120.00	1,028.74	1,148.74			
NRETAS	60.00		60.00		1,243.88	1,243.88
NTAGO						
NTEC	30.00		30.00			
NTPFES	1,110.00	284.00	1,394.00	270.00	579.00	849.00
NTT	60.00	524.16	584.16			
OCM						
OCPE	30.00		30.00			
TNT	30.00	200.00	230.00	30.00		30.00
CDU	30.00		30.00			
TRB				30.00		30.00
DCC	90.00		90.00			
<b>TOTAL</b>	<b>3,474.40</b>	<b>12,978.03</b>	<b>15,830.36</b>	<b>995.60</b>	<b>16,493.58</b>	<b>17,489.18</b>

**Table 7 – Correction applications**

<b>Table 7 /PSO</b>	<b>Lodged*</b>	<b>transfer</b>	<b>with-drawn</b>	<b>open at year's end</b>	<b>finalised</b>	<b>correction made as specified</b>	<b>made in another form</b>	<b>no correction made</b>
NTPFES	0 (1) <sup>18</sup>				1			1
TRB	1				1		1	
<b>TOTAL</b>	<b>1 (1)</b>				<b>2</b>		<b>1</b>	<b>1</b>

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

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.

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<sup>18</sup> NTPFES advised this figure as an amendment to the 2010-11 statistical return, where no outstanding correction applications were reported.



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