



Scrutinising government

ADMINISTRATION OF THE
FREEDOM OF INFORMATION ACT 1982
IN AUSTRALIAN GOVERNMENT AGENCIES

March 2006

Report by the Commonwealth Ombudsman,
Prof. John McMillan under the *Ombudsman Act 1976*

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Reports by the Ombudsman

Under the *Ombudsman Act 1976* (Cth), the Commonwealth Ombudsman investigates the administrative actions of Australian Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

The *Ombudsman Act 1976* confers three other roles on the Commonwealth Ombudsman—the role of Taxation Ombudsman, to investigate action taken by the Australian Taxation Office; the role of Immigration Ombudsman, to investigate action taken in relation to immigration (including immigration detention); and the role of Defence Force Ombudsman, to investigate action arising from the service of a member of the Australian Defence Force. The Commonwealth Ombudsman investigates complaints about the Australian Federal Police under the *Complaints (Australian Federal Police) Act 1981* (Cth).

Most complaints to the Ombudsman are resolved without the need for a formal finding or report. Both of the above Acts provide (in similar terms) that the Ombudsman can culminate an investigation by preparing a report containing the opinions and recommendations of the Ombudsman. A report can be prepared if the Ombudsman is of the opinion that the administrative action under investigation was unlawful, unreasonable, unjust, oppressive, improperly discriminatory, or otherwise wrong or unsupported by the facts; was not properly explained by an agency; or was based on a law that was unreasonable, unjust, oppressive or improperly discriminatory.

A report by the Ombudsman is forwarded to the agency concerned and the responsible minister. If the recommendations in the report are not accepted, the Ombudsman can choose to furnish the report to the Prime Minister or Parliament.

These reports are not always made publicly available. The Ombudsman is subject to statutory secrecy provisions, and for reasons of privacy, confidentiality or privilege it may be inappropriate to publish all or part of a report. Nevertheless, to the extent possible, reports by the Ombudsman are published in full or in an abridged version. Copies or summaries of the reports are usually made available on the Ombudsman website at www.ombudsman.gov.au. Commencing in 2004, the reports prepared by the Ombudsman (in each of the roles mentioned above) are sequenced into a single annual series of reports.

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EXECUTIVE SUMMARY

This ‘own motion’ investigation into the administration of the *Freedom of Information Act 1982* (FOI Act) in Australian Government departments and agencies was initiated in the interests of focusing attention on good practice as well as areas requiring improvement.

The Ombudsman wished to examine FOI practice in relation to timeliness, consistency and quality of decision-making in relation to FOI requests.

The investigation found that there is an uneven culture of support for FOI among Australian Government agencies. Some agencies are displaying a clear commitment to FOI, and are supportive of the Act’s objective of extending as far as possible the right of the Australian community to access information in possession of the Government (s 3(1) FOI Act). Other agencies do not as firmly demonstrate such a commitment, as seen in deficiencies that include:

- excessive delays in the processing of some FOI requests
- lack of consistency in acknowledging FOI requests in a timely fashion
- delay in notifying charges and inconsistencies in their application
- variable quality in the standard of decision letters, particularly regarding the explanation of exemptions imposed.

This investigation supports the view that the FOI Act works well in facilitating public access to personal information, but not so well in providing access to policy-related information. The Australian Law Reform Commission (ALRC), the Administrative Review Council (ARC), the Commonwealth Ombudsman, and the Senate Legal and Constitutional Legislation Committee have revealed similar findings in previous reports. The report recommends that agency heads issue a clear statement to staff expressing a commitment to sound FOI practice and the goals of the FOI Act, having regard to the kinds of good and bad practice identified in this report.

At present, there is no single or authoritative source of advocacy for good FOI practice. There is now consensus amongst the ALRC, ARC, Commonwealth Ombudsman and the Senate Legal and Constitutional Legislation Committee that many of the shortcomings in the current operation and effectiveness of the Act could be addressed with the establishment of a constant, independent monitor. A statutory FOI Commissioner would publicise the legislation’s existence, monitor compliance with its provisions and promote its effective operation.

This report recommends that the government consider establishing an FOI Commissioner, possibly as a specialised and separately funded unit in the office of the Commonwealth Ombudsman. This would provide an independent monitor, without the need for the additional infrastructure of a new office. It would build on the Commonwealth Ombudsman’s existing independence and infrastructure, and close involvement with FOI across all government agencies.

PART 1—INTRODUCTION

Background to the own motion investigation

1.1 On 10 May 2004, the Commonwealth Ombudsman announced an own motion investigation into the quality of agency processing of requests made under the *Freedom of Information Act 1982* (the FOI Act). The Ombudsman initiated this investigation because of concern that standards for processing Freedom of Information (FOI) requests had dropped. It followed on from the 1999 Commonwealth Ombudsman's report, *Needs to Know*¹, which also investigated the administration of FOI in Australian Government agencies.

1.2 Access to government information is integral to democratic, transparent and accountable government. The FOI Act commenced operation on 1 December 1982. The Act was an element of a reformed administrative law framework that also included the *Administrative Appeals Tribunal Act 1975*, the *Ombudsman Act 1976*, and the *Administrative Decisions (Judicial Review) (ADJR) Act 1977*. Other legislation that supplemented this new body of administrative law and its underlying premise of 'open government' included the *Privacy Act 1988* and the *Archives Act 1983*, which codified record management.

1.3 The purpose of the FOI Act, as described in s 3(1), is to 'extend as far as possible the right of the Australian community to access ... information in possession of the Government of the Commonwealth'. The Act seeks to do this in two ways, as described by the then Attorney-General, Senator Peter Durack QC, in introducing the FOI Bill into the Senate in April 1981:

[F]irstly, by making available to the public information about the operations of departments and public authorities and ... secondly, the Bill creates a general right of access to official information in documentary form in the possession of Ministers, departments and public authorities.²

1.4 This right of public access to information is constrained by a limited number of exemptions, designed to protect essential public interests and for the protection of the private or business affairs of persons in respect of whom information is collected and held by government agencies.

History of the Ombudsman's office in relation to the FOI Act

1.5 There is a close correspondence between many of the objectives of FOI and the purposes for which the Ombudsman was established. As a consequence, the evolving role of the Ombudsman in FOI administration has attracted particular interest from legislators and others involved in the development of the FOI Act.

1.6 The FOI Bill, introduced in 1978, was the subject of a major report in 1979 by the Senate Standing Committee on Constitutional and Legal Affairs.³ The Committee proposed a substantial expansion of the Ombudsman's powers to investigate ministerial decisions, act as counsel before the Administrative Appeals Tribunal (AAT) on behalf of any applicant, advise agencies about their obligations under the Act and to oversee its administration.

¹ Commonwealth Ombudsman, *Needs to Know*, an Own Motion Investigation into the Administration of the *Freedom of Information Act 1982* in Commonwealth Agencies, June 1999.

² CPD (Senate) 2 April 1981 at 1059.

³ Senate Standing Committee on Constitutional and Legal Affairs, *Freedom of Information*, AGPS Canberra, 1979.

1.7 The government accepted only some of the Committee's recommendations, and only partially accepted the expansion of the Ombudsman's role; in the result, the FOI Act provided for the Ombudsman to investigate a complaint where there was also a right of appeal to the AAT (s 57). However, less than one year after the passing of the FOI Act (and under a new government), the Act was amended by the *Freedom of Information Amendment Act 1983*, to incorporate those recommendations of the 1979 Senate Committee report that had not been incorporated into the original FOI Act. In addition to providing a greater right of access to documents created before the enactment of the FOI Act, the amendments significantly empowered the Ombudsman to carry out the role of monitor and rapporteur of the Act.⁴

1.8 Resource constraints within the Ombudsman's office during the mid-1980s meant, however, that the Ombudsman did not perform those additional functions; generally speaking, only individual complaints against agencies were investigated. In 1987, the Senate Standing Committee on Legal and Constitutional Affairs reported on the operation and administration of the FOI Act, and recommended that the Ombudsman's role of monitor and rapporteur with respect to the FOI Act be removed. Its reasoning was that the Ombudsman's office had not been able to fill this role effectively because of lack of resources and that 'other means [largely based on an expectation that the Attorney-General's Department might be able to fill the need] have developed to fill any resulting gap'.⁵ Those recommendations were taken up in the *Freedom of Information Amendment Act 1991* and resulted in the repeal of Part VA (ss 52A–52F), and the insertion of a new s 57 which provided for the Ombudsman to continue investigating FOI matters, but no longer to take any role in the day-to-day monitoring of agency performance in administration of the Act.

1.9 The FOI Act has been amended on more than 60 occasions since 1982, although there have been only three major pieces of amending legislation—the last of which was the *Freedom of Information Amendment Act 1991*.⁶ The *Ombudsman Act 1976* and the FOI Act together provide the relevant powers for the Commonwealth Ombudsman to investigate FOI matters. Under the former, the Commonwealth Ombudsman is generally empowered to investigate the administrative actions of Australian Government agencies, either in response to a complaint by an affected individual or entity, or on the Ombudsman's own motion. Although there are some matters excluded from the Ombudsman's jurisdiction (for example, judicial decisions, those of ministers and matters of public sector employment) the overwhelming majority of the decisions and actions of Australian Government agencies in discharging their day-to-day administrative responsibilities—including those relating to FOI—are subject to the Ombudsman's scrutiny.

1.10 The Ombudsman's role in FOI matters is limited by s 57(8) of the FOI Act to agencies that are prescribed authorities for the purposes of the Ombudsman Act. Sections 56 and 57 of the FOI Act provide the Ombudsman with specific powers and functions additional to those conferred by the Ombudsman Act, and establish explicit linkages between the two sets of legislation, effectively explaining how the Ombudsman's existing powers are to apply to FOI matters. Thus, the Ombudsman may investigate complaints about agency decisions to deny or grant limited access to documents, the amount of fees and other charges associated with FOI requests, delays in responding to requests or other administrative processes, and the

⁴ *Freedom of Information Amendment Act 1983*, s 27, inserted a new Part VA (ss 52A–52F): Role of the Ombudsman.

⁵ Senate Standing Committee on Legal and Constitutional and Affairs, *Report on the Operation and Administration of the Freedom of Information Legislation*, December 1987 at paras 17.25 and 17.28.

⁶ The two earlier pieces of major amending legislation were the previously mentioned *Freedom of Information Amendment Act 1983*, as well as the *Freedom of Information Laws Amendment Act 1986*.

adequacy or clarity of reasons for decisions. The FOI Act also requires agencies to inform applicants of their right to complain to the Ombudsman about FOI matters.

1.11 The Ombudsman's role under the FOI Act reflects the more general role of the office in promoting transparency and accountability in government administration. This includes ensuring that agencies implement sound document management procedures, provide clear and accessible information, and are open and responsive to complaints about issues to do with access to information. The Ombudsman generally does not become involved with complaints about FOI decisions until the applicant has sought internal review of a disputed decision or, in some cases, where a matter has been reviewed by the AAT. Where a matter has been reviewed by the AAT, the Ombudsman will not ordinarily investigate unless there are 'special reasons' warranting an investigation.

1.12 The Ombudsman continues to take a special interest in FOI matters. Examples include:

- the inclusion of a section in the Ombudsman's annual reports detailing the number and nature of FOI complaints involving Australian Government agencies that have been received during the reporting period
- the investigation of FOI complaints, even when the complainant has a right to AAT review
- conduct of the 1999 own motion review into FOI matters, *Needs to Know*
- the Ombudsman's membership of the Administrative Review Council, which has a policy advice role in FOI matters.

1.13 The other Australian Government agency with specifically designated responsibilities under the FOI Act is the Attorney-General's Department (A-G's), which is required under s 93 to report annually on the Act's administration. The annual reports provide a compilation of statistical information provided by government agencies. A-G's also maintains an FOI website that provides general FOI information to the public; issues FOI Memoranda providing commentary on certain sections of the Act to assist agency staff in processing FOI requests; and administers an email discussion network called FOIAPPS, which provides an electronic forum for subscribers to seek answers to FOI questions. A-G's also carries a training role that has been discharged by the Australian Government Solicitor (AGS). The AGS provides FOI training courses on a fee-for-service basis and convenes a quarterly FOI Practitioners Forum in Canberra to keep FOI staff up-to-date with current FOI issues, including AAT decisions.

1.14 The Attorney-General's administrative responsibilities with respect to FOI are confined to maintenance of the Act, general FOI policy and preparing a report containing agencies' FOI statistics. The Attorney-General is not charged with responsibility for monitoring agencies' administration of the FOI Act or conducting audits of agencies' performance. Nor is the Attorney-General responsible for publicising the Act and educating the public. The Chief Officer of each agency is responsible for his or her agency's FOI performance. However, A-G's does assist the public and agency practitioners in explaining the Act from time to time as resources allow, and maintains an FOI website.

PART 2—PREVIOUS REVIEWS OF FOI ACT, 1991–2004

ALRC Report No 77/ARC Report No 40—December 1995

2.1 In December 1995, the Australian Law Reform Commission (ALRC) and the Administrative Review Council (ARC)⁷ issued a joint report titled *Open Government: a Review of the Federal Freedom of Information Act 1982*.⁸ The review set out to determine whether the FOI Act had achieved its purposes and, if it had not, to recommend changes to improve its effectiveness. The review found that, while the FOI Act had had a significant impact on the way that agencies made decisions and on the way that they recorded information, many agencies continued to foster a ‘culture of secrecy’. While some agencies had adopted a constructive and positive approach to the processing of FOI requests, others had taken an adversarial and excessively legalistic attitude.

2.2 Even though the FOI Act was found to be confusing for many applicants and difficult to use, the structure and general content of the Act was not seen to be overly problematic. However, one particular problem identified was the lack of a designated single, independent, person or organisation with responsibility for overseeing the Act’s administration. The review found that ‘many of the shortcomings in the current operation and effectiveness of the Act can be attributed to this lack of a constant, independent monitor of and advocate for FOI’.⁹ The report contained four key recommendations:

- creation of a statutory FOI Commissioner to monitor and improve the administration of the FOI Act
- revision of the Act’s object clause to promote a pro-disclosure interpretation of the FOI Act
- rationalisation of the exemption provisions, so that documents can only be withheld where that is in the public interest
- applying charges that are not incompatible with the objects of the Act: in particular, access to an applicant’s personal information should be provided free of charge.

2.3 The *Open Government* report has received widespread support from practitioners and academics, but there has been no response to the report from the Australian Government.

Commonwealth Ombudsman report—*Needs to Know*—June 1999

2.4 In early 1999, the Commonwealth Ombudsman conducted an own motion inquiry into the administration of the FOI Act by government agencies. This was initiated on the basis of a trend in complaints to the Ombudsman indicating that there were certain administrative problems in the handling of FOI requests. A report, titled *Needs to Know*,¹⁰ was released in June 1999. The investigation revealed widespread problems in the recording of FOI decisions and the probable misuse of the exemption provisions in certain instances to avoid the disclosure of information. Other problems related to the disclosure of personal

⁷ The Commonwealth Ombudsman is an *ex officio* member of the Administrative Review Council.

⁸ Australian Law Reform Commission, Report No 77 and Administrative Review Council, Report No 40, *Open Government: A Review of the Federal Freedom of Information Act 1982*, December 1995.

⁹ *Ibid* at para 6.2.

¹⁰ Commonwealth Ombudsman, *Needs to Know*, an own motion investigation into the administration of the *Freedom of Information Act 1982* in Commonwealth Agencies, June 1999.

information, authorisations, FOI training and records management. The report concluded that some of the principles encompassed in the original legislation had been forgotten or were not fully understood by some of the current managers working in Australian Government agencies. In particular, the Ombudsman's report noted that:

[T]he investigation also identified a more pervasive malaise in the administration of FOI: a growing culture of indifference or resentment towards the disclosure of information, ailing standards of training and development and a profound lack of understanding of or commitment to the ethos and purpose of the legislation. It appeared that, although the FOI Act had wrought some change in the culture of public administration, its goals had been imperfectly achieved. Many of the early FOI practitioners were advocates of open government, but had, over time, been replaced by staff who had grown up in a very different environment, with FOI just one of a number of competing demands on agency time and resources.¹¹

2.5 The report supported the conclusions and recommendations contained in the 1995 ALRC/ARC *Open Government* report, particularly in relation to the need for an agency to be given responsibility and resources for the ongoing supervision of FOI administration. Other recommendations included:

- where practicable, agencies should adopt a centralised approach to the management of FOI, including decision making
- where appropriate, agencies are encouraged to provide for the public disclosure of information without the need for recourse to the FOI Act
- agencies should provide for the disclosure of an applicant's personal information outside the provisions of the FOI Act
- agencies should ensure that the internal review of FOI decisions is discernibly at arms length from the initial decision maker.

Senate Legal and Constitutional Legislation Committee—Inquiry into FOI (Open Government) Bill 2000—April 2001

2.6 On 5 September 2000, Senator Andrew Murray introduced a private member's Bill into the Senate: the *Freedom of Information Amendment (Open Government) Bill 2000*. The Bill largely drew on the recommendations contained in the ALRC/ARC *Open Government* 1995 report requiring legislative amendment for implementation, including the introduction of an FOI Commissioner. The Bill was subsequently referred to the Senate Legal and Constitutional Legislation Committee. That Committee reported on the Bill in April 2001. It endorsed many of the amendments to the FOI Act contained in the Bill, and recommended that the Bill proceed, subject to certain proposed changes. The report concluded that it supported those amendments that:

- promote the pro-disclosure interpretation of the FOI Act
- seek to ensure that those provisions which allow for access to be refused on the ground that the FOI request is too resource-intensive are not misused
- facilitate the amendment and annotation of personal records
- enhance the review mechanisms available under the FOI Act by agencies
- abolish, minimise and provide oversight of, fees and charges associated with FOI.

¹¹ Commonwealth Ombudsman, Submission 17 to the Senate Legal and Constitutional Legislation Committee—*Inquiry into the Freedom of Information Amendment (Open Government) Bill 2000* at para 7.3.

2.7 The report also endorsed the Bill's proposed introduction of an FOI Commissioner, and concluded that, on balance, those functions should be conferred on the Commonwealth Ombudsman—with a specialised unit to be established within the office for the purpose of supporting the Ombudsman in that role. The arguments put forward in support of that recommendation will be covered in a later part of this report.

2.8 On 25 June 2003, Senator Murray again introduced into the Senate an amended private member's Bill—the *Freedom of Information Amendment (Open Government) Bill 2003*—so as to amend the FOI Act and the Freedom of Information (Fees and Charges) Regulations. Its purpose was to extend to the public access to information in the possession of the Commonwealth and to create an independent position of FOI Commissioner, to be held by the Commonwealth Ombudsman. This Bill essentially updated the earlier Bill with the incorporation of the proposed changes contained in the Senate Legal and Constitutional Legislation Committee's report of April 2001. Debate was adjourned after its Second Reading, but the Bill was subsequently restored to the Notice Paper on 17 November 2004. The Bill remains on the current Bills List at the Senate Table Office.

ANAO Report—Administration of FOI Requests—June 2004

2.9 The Auditor-General, through the Australian National Audit Office (ANAO), provides an independent review of the performance and accountability of Australian Government agencies. In June 2004, the ANAO tabled a report—*Administration of Freedom of Information Requests*¹²—of its audit of the administration of FOI requests in six selected government agencies. This was the first ANAO audit undertaken of agencies' administration of FOI requests.

2.10 The objectives in conducting the ANAO audit were more limited than had applied to the three earlier reviews already mentioned. There was no intention to determine whether or not the existing legislation was able to meet the purpose for which it had been designed. Nor did the ANAO audit attempt to form a view on whether decisions to release or not release information were correct or appropriate. Rather, the audit set out to assess the administrative processes of a relatively small number of Australian Government agencies in dealing with FOI requests and in complying with the provisions of the FOI Act.

2.11 The audit concluded that, to varying degrees, the six agencies concerned had in place appropriate policies and processes to support the processing of FOI requests. It found that, whilst A-G's and the AGS were able to provide general practical information to agency FOI practitioners involved in the processing of FOI requests, there was no government agency responsible for monitoring compliance with the FOI Act or identifying opportunities for improvement from the information required. Indeed, A-G's reiterated to the ANAO that it has no power to ensure or demand compliance with the FOI Act, other than in relation to the collection of FOI statistics for the FOI Annual Report.¹³ Other conclusions related to the audited agencies included:

- staff with specific FOI coordination responsibilities had a sound knowledge of the FOI Act, although a general understanding of the Act by other staff was often more limited
- staff with FOI decision-making delegations were at an appropriate level but did not always have to demonstrate that they had the requisite skills and an understanding of the FOI Act, prior to being appointed a delegate

¹² Australian National Audit Office, *Administration of Freedom of Information Requests*, Audit Report No 57 of 2003–04, June 2004.

¹³ *Ibid* at para 2.30.

- the consistency between, and within, agencies on decisions as to whether to impose processing charges varied widely, with limited guidance available to support the basis of such decisions.

2.12 Four of the ANAO's nine recommendations specifically referred to the A-G's administration of the FOI Act; the first, and perhaps key, recommendation being:

[The] Attorney-General's Department [should] take a more active role in monitoring agency compliance with the requirements of the FOI Act. This could be achieved by including more detailed analysis of the statistics collected for publication in the FOI Annual Report and providing feedback to the Chief Executive Officers of agencies where non-compliance with the provisions of the FOI Act is identified.¹⁴

State Ombudsman reports and inquiries

2.13 From time to time, FOI-related reports have been issued and inquiries initiated by State Ombudsman that are relevant to their State's own FOI legislation. In May 2005, the Victorian Ombudsman issued a Discussion Paper—*Review of the Freedom of Information Act*¹⁵—that called for submissions to an investigation then being conducted into the *Freedom of Information Act 1982* (Vic). The paper contains some initial findings that echo criticisms that have been made at the Australian Government level. They include:

- the FOI Act is at times administered in compliance mode rather than with an ethos of open government
- proper administration of the FOI Act requires the allocation of sufficient resources
- applicants can experience difficulty in formulating requests that departments will accept as clear and unambiguous requests for access
- there can be unreasonable delays in processing requests
- there can be misuse of exemptions to deny access to sensitive documents.

2.14 In October 2005, the NSW Ombudsman issued within its 30th Anniversary Annual Report 2004–05¹⁶ a ten-page report into certain current matters related to the *Freedom of Information Act 1989* (NSW). A number of the criticisms of FOI administration contained within that report should also be heeded at the Commonwealth level. They include:

- a downward trend in the percentage of applications where all documents requested are released in full
- complaints about the amount of money being demanded by agencies as an advance deposit before a request will be actioned
- an inappropriate use of exemption clauses by agencies
- a failure by agencies to give proper reasons for a refusal to release documents
- the sometimes inappropriate classification of documents by agencies to avoid releasing them to the public.

¹⁴ *Ibid* at para 2.29.

¹⁵ Victorian Ombudsman, *Review of the Freedom of Information Act* – Discussion Paper, May 2005.

¹⁶ NSW Ombudsman, 30th Annual Report 2004–05, 13 October 2005 at Ch 10.

PART 3—INVESTIGATION INITIATION AND METHODOLOGY

FOI complaints to the Ombudsman

3.1 Over the past ten years, the Commonwealth Ombudsman has received an average of 267 complaints per year related to the way that Australian Government agencies have responded to requests under the FOI Act. Complaints relating to FOI make up a small proportion of the Ombudsman's total complaint workload. In some other cases, FOI issues will form part of the factual matrix or part of the remedy.

Table 1—FOI related complaints received by the Commonwealth Ombudsman, 1982–83 to 2004–05

1.	1982–83	36	13.	1994–95	287
2.	1983–84	70	14.	1995–96	283
3.	1984–85	142	15.	1996–97	301
4.	1985–86	91	16.	1997–98	276
5.	1986–87	67	17.	1998–99	253
6.	1987–88	91	18.	1999–00	260
7.	1988–89	64	19.	2000–01	262
8.	1989–90	49	20.	2001–02	266
9.	1990–91	76	21.	2002–03	263
10.	1991–92	76	22.	2003–04	229
11.	1992–93	188	23.	2004–05	275
12.	1993–94	200			

3.2 These complaints are clearly a small proportion of the total number of FOI requests received by Australian Government agencies in recent years, which have been in the order of 30,000 to 40,000 per year (from a total of 30,788 in 1996–97 to 39,265 in 2004–05). FOI applicants who go on to complain to the Commonwealth Ombudsman comprise less than one per cent of total FOI applicants: in the full picture, credit is due to the majority of agencies whose staff are working assiduously and fairly on FOI requests. However, the complaints to the Ombudsman do indicate some areas for improvement in agency practice.

Reason for the own motion investigation

3.3 This own motion investigation¹⁷ into the quality of agency processing of requests made under the FOI Act was commenced almost five years after the earlier Ombudsman own motion report on FOI administration, *Needs to Know*. The Ombudsman had become concerned that the FOI complaints were revealing delays in the processing of requests, some inconsistency in the imposition of fees and charges, and that 'reasons statements' provided to applicants were often falling short of the standard mandated by s 26 of the FOI Act.

3.4 Twenty-two agencies (see Table 2) were selected to participate in the investigation. The agencies were selected to provide a cross-section of agencies with different functions, including policy coordination, service delivery, and law enforcement/regulatory functions. This selection had the purpose of testing the hypothesis that FOI had worked more

¹⁷ Own motion investigations are conducted under s 5(1)(b) of the *Ombudsman Act 1976*.

successfully in relation to the provision of client personal information than to policy-related information. Agencies were also selected to provide a mix of larger and smaller agencies, with differing FOI request loads and corresponding levels of sophistication in the processing of FOI requests. The office sought not to over-burden the six agencies that had been selected for the ANAO FOI audit in 2004 with a further FOI investigation.¹⁸ With a selection made, the heads of the 22 agencies involved were then formally advised of the investigation and its scope, which included:

- identification of FOI requests and agency documents related to the processing of those requests
- agency compliance with time limits
- agency consideration of fees and charges
- the quality of reasons statements, including the explanation of exemptions and information.

Table 2—Agencies selected to participate in the 2004–05 investigation

1.	Australian Crime Commission
2.	Australian Competition and Consumer Commission
3.	Australian Federal Police
4.	Australian Maritime Safety Authority
5.	Australia Post
6.	Australian Prudential Regulation Authority
7.	Australian Securities and Investments Commission
8.	Australian Taxation Office
9.	Centrelink
10.	Child Support Agency
11.	Department of Communications, Information, Technology and the Arts
12.	Department of Defence
13.	Department of Education, Science and Training
14.	Department of Employment and Workplace Relations
15.	Department of Family and Community Services
16.	Department of Finance and Administration
17.	Department of Immigration and Multicultural Affairs
18.	Department of Industry, Tourism and Resources
19.	Department of Prime Minister and Cabinet
20.	Department of Veterans' Affairs
21.	Telstra Corporation
22.	The Treasury

¹⁸ The AFP was an agency considered in both investigations. It was of interest because of its law enforcement role, because of its interactions with a large client base and because it had attracted complaints to the Ombudsman about FOI matters.

Methodology

3.5 The information-gathering took place between May and August 2004. This included a review of the Commonwealth Ombudsman's own complaints record database of FOI-related complaints received during the period 2001–02, 2002–03 and 2003–04. It also included an analysis of FOI-related decisions of the AAT and recent A-G's statistical information contained in FOI Annual Reports. Each of the selected agencies was also asked to respond to a questionnaire seeking the following information:

- Is FOI processing centralised or decentralised in your agency?
- How many FOI staff are there? Are they full-time or part-time? What FOI training have they had?
- How many FOI applications were received in your agency in 2002, 2003 and 2004?
- How many requests were made for internal review of FOI decisions in 2002, 2003 and 2004?
- How are FOI cases recorded and filed?
- Please provide a list of FOI matters in the AAT or other courts for 2001 to 2004.
- Provide a copy of the current FOI Authorisations used in your agency.
- Provide a copy of any FOI material you make available to the general public, including any URL reference.
- Provide a copy of your current Section 8 and Section 9 statements.¹⁹

3.6 Each agency was also asked to submit a list of FOI-request files created during the period 2001–02 to 2003–04, from which up to 17 files (and down to six for smaller agencies) were randomly selected for examination. The purpose of this examination was to determine the extent to which the processing of FOI requests complied with the requirements of the Act, particularly with regard to timeliness and decision-making.

3.7 Each of the agencies was provided with a summary of the results of the investigation, as it applied to that particular agency. At the same time, agencies were advised that the Ombudsman intended to issue a public report dealing with significant FOI matters that had been identified through the project. Agencies were also advised that the report would de-identify, as far as it was possible to do so, any agency-specific material referred to. The Ombudsman noted particularly that:

I am mindful that the examination of a relatively small number of randomly selected FOI files from an agency will not necessarily provide a statistically valid sample of that agency's overall approach to the handling of FOI requests. It is nevertheless my expectation that useful insights about FOI administration can be gleaned from the general survey of agency practice undertaken in this study, considered together with other indicators, such as FOI Annual Reports, agency FOI manuals and guidelines, Administrative Appeals Tribunal decisions and the Ombudsman's complaint database records of FOI issues.

¹⁹ Section 8 of the FOI Act requires each agency to publish detailed information about the way it is organised, its powers, the kinds of decisions made, documents held by the agency, and how members of the public can obtain access to those documents. Section 9 of the Act requires each agency to make available at the National Archives of Australia a statement listing documents used by the agency in making decisions that affect the public.

3.8 The investigation did not include in any detail the contentious issues of FOI exemptions, particularly those related to ‘conclusive certificates’,²⁰ which more commonly come within the purview of courts and tribunals.

²⁰ Where a conclusive certificate is issued, the role of the AAT is limited to determining whether there existed reasonable grounds for its issue. Under s 36(3) of the FOI Act, a Minister may block the issue of an internal working document if it is deemed that ‘disclosure of the document would not be in the public interest’. The use of this provision by the Treasurer, Mr Peter Costello, to issue a ‘conclusive certificate’ in order to block the release of certain documents relating to income tax, is currently being challenged by the Freedom of Information Editor of *The Australian*, Mr Michael McKinnon. The High Court of Australia granted Mr McKinnon special leave to appeal on 3 February 2006.

PART 4—INVESTIGATION RESULTS—EXTERNAL DATA

Administrative Appeals Tribunal findings

4.1 During the three-year period 2001–02 to 2003–04, the Administrative Appeals Tribunal (AAT)²¹ received a total of 375 review applications related to Australian Government agency FOI requests.²² A review of AAT findings, in which there were references to the processing of FOI requests by agencies, included the following comments:

- Section 24A provides that a request may be refused if documents cannot be found or do not exist, although all reasonable steps must be taken to find material meeting an applicant's request. The AAT noted that s 24 may require an agency to designate a member of staff familiar with that kind of material to undertake a search for it: *Beesley v Commissioner of Taxation* [2001] AATA 476; *Mester v Centrelink* [2004] AATA 354.
- If an agency is unsure whether or not an applicant is requesting an internal review (for example, the correspondence is in the form of protest or criticism of the agency's decision) the agency should treat the correspondence as a request: *Mulder v Department of Immigration and Multicultural Affairs* [2001] AATA 545.
- Staff should be assiduous in maintaining copies of communications with external agencies when the communication contains a third person's personal information: *Mulder v Department of Immigration and Multicultural Affairs* [2001] AATA 545.
- An agency's inability to account for a file reflects on that agency's responsibility to protect documents containing the personal information of an individual: *Williams v Department of Family and Community Services* [2001] AATA 848.
- When an agency undertakes changes in its administration or structure it must ensure the integrity and continuance of its records: *'SRY' v CEO, Centrelink* [2002] AATA 73.
- An agency should do all it can to comply with a request for information within the time period provided; failing that, and at the very least, it should liaise with the applicant to try and seek agreement to a refinement of or amendment to the request: *'SROO' and Department of Defence* [2002] AATA 115. In another case it was held that the agency should have taken earlier action to commence processing a request in order to complete it within the period provided for under the FOI Act; the agency also should have followed the guidelines provided in the AG's Department FOI Memorandum No 98—Exemptions: *Mulder v Commonwealth Director of Public Prosecutions* [2001] AATA 546; *Schlegel v Department of Transport and Regional Services* [2002] AATA 1184.

²¹ The AAT is able to review agency decisions in respect of an FOI application. Section 55 of the FOI Act provides that an application may be made for such a review within 60 days of the date of notification of the decision on internal review. Section 56 of the Act also provides for an appeal to the AAT when an agency has not processed an FOI request within the prescribed 30-day period (or 60 days when third-party consultation is required).

²² Attorney-General's Department, Appendix G to FOI Annual Reports, 2001–02, 2002–03 and 2003–04.

- An FOI request may be made in unspecific terms, which may require an agency to speculate on the type of material that could come within the scope of the request; agencies should remember that the object of the FOI Act is for openness when assessing the relevance of a request: *Hart v Deputy Commissioner of Taxation* [2002] AATA 1190.
- A decision by an agency to request, accept or decline the transfer of a request under s 16 should be in writing: *Bienstein v Commonwealth Ombudsman* [2003] AATA 1197.
- In a situation where an agency makes a claim under s 24A of the Act, it is better to explain that the documents cannot be found or do not exist rather than tell the applicant that his/her request has been denied: *Herdman v Centrelink* [2003] AATA 103.
- It should not be the responsibility of the applicant to pursue an agency to which a request for information has been made, in order to ensure that the agency locates and provides all the material to which the applicant is entitled: *Kapeen-Gangitano v Secretary, Department of Family and Community Services* [2003] AATA 1163.

Observation

4.2 Those AAT findings emphasise the importance of an agency having in place clearly established procedures for the processing of FOI requests. Those procedures should be aligned with internal procedures that provide for good record-keeping and the accountability of files. Both under FOI and generally, agency record keeping should facilitate ready and reliable access to agency documentation.

Commonwealth Ombudsman’s complaints management database

4.3 During the three-year period covered by this investigation (2001–02 to 2003–04), the Commonwealth Ombudsman received a total of 758 FOI-related complaints. Of this number, 608 were related to one or other of the 22 agencies participating in the investigation. Three of the participating agencies registered nil complaints over the period, whilst three other agencies registered individual totals of 62, 77 and 300 complaints respectively. The majority of agencies had registered six or fewer complaints over the period. The major sources of complaint (20 instances or more) are detailed in Table 3 below.

Table 3—Major sources of FOI-related complaint to the Commonwealth Ombudsman, 2001–02 to 2003–04

Delays in processing	153
Withholding information/denial of access/letters of explanation	51
Misplaced/lost/destroyed documents	34
Failure to acknowledge a request	26
Fees and charges	23

4.4 At a general level, it should be noted that, even now, after FOI has been in effect for 23 years, agencies do not always provide a smooth service to FOI applicants. The Ombudsman’s office has seen refusals on minor points, such as not accepting email

requests and declining a request because it asked for 'information' and not 'documents'. By way of brief comment on those two issues, email is a valid way to communicate with an agency, make a request and seek remission of any fee. Failing to deal with an email request would breach the obligation to assist a correspondent to make a valid request. As to the second issue, the use of the word 'document' or the expression 'freedom of information' or 'FOI' is not required for a request to be valid. The Act was in fact drafted with the purpose of making applications easy. All that is required is that enough information is provided for an agency to identify the relevant documents.

4.5 Those two examples of poor agency responses do not necessarily indicate that there is a culture of obstructionism in government agencies. More than likely, the problems that come to the Ombudsman's office indicate that some individuals within those agencies are not sufficiently familiar with the overall objectives of the FOI Act.

Observation

4.6 Twenty-five percent of all FOI-related complaints received by the Commonwealth Ombudsman during the period 2001–02 to 2003–04 concerned alleged delays in the processing of FOI requests. As noted in the Commonwealth Ombudsman Annual Report 2004–05:

As in previous years ...[i]n a number of cases this was due to basic administrative error, such as the agency misplacing the FOI request, failing to interpret it as an FOI request, failing to forward it to the relevant area for processing, or forgetting to send its decision (and the documents) to the applicant. In other cases, it was due to unanticipated staff shortages or delays in consultation.²³

4.7 In the case of one or two agencies participating in the investigation, there appear to be systemic delays caused by insufficient resources allocated to processing FOI requests. In one or two other agencies, there appears to be a culture of compliant but protracted processing of FOI requests.

4.8 The other major cause for complaint during the period resulted from the complainant's inability to obtain the requested information from the agency concerned, either because the agency claimed an exemption, or the agency was not able to locate the relevant document/s.

Section 9 Statements

4.9 Section 9 of the FOI Act requires agencies to make available at the National Archives of Australia (NAA) a statement listing documents used by an agency in making decisions that affect the public. These statements are required to be updated at three-monthly intervals where practicable, and, in any case, within 12 months of the previous statement. The NAA provides a link to those statements on its website at <www.naa.gov.au/about_us/organisation_staff/foi_section9.htm>.

4.10 Of the 22 agencies participating in this investigation, 16 had their s 9 statements linked to the NAA website, whilst four did not. In addition, one agency had a link on the NAA website that purported to lead to its s 9 statement, but no such statement could be found. A further agency did not have its s 9 statement on the NAA website, but it had claimed exemption from that provision by dint of its exemption from the operation of the FOI Act with respect to its commercial activities.

²³ Commonwealth Ombudsman Annual Report 2004–05 at p 65.

4.11 Of the 16 agencies having their s 9 statement linked to the NAA site, only nine had been updated within the previous 12 months. The statements of four agencies were more than three years out-of-date.

Observation

4.12 Not all agencies are meeting the requirements of s 9 of the FOI Act. This was also a finding of the 2004 ANAO Report, *Administration of Freedom of Information Requests*, which noted that only 48 per cent of agencies subject to the FOI Act appeared to have provided such statements to the NAA.²⁴

Agency response times to FOI Requests—as reported in FOI Annual Reports

4.13 Agencies are required to forward statistical returns to the Attorney-General's Department on a regular basis for inclusion in its FOI Annual Report. Appendix C to that report provides a set of tables indicating the number of requests determined during the financial year, whether the requests were for personal or other than personal information, and how long it took to process those requests.

4.14 During the period 2001–02, 2002–03 and 2003–04, the total number of requests determined by all Australian Government agencies was, respectively: 35,108; 38,370; and 39,774. The great majority of those requests were for personal information—in 2003–04, 92 per cent of requests received by agencies were in that category.

4.15 Three Australian Government agencies, between them, determined 89 per cent of the total number of requests received by all Australian Government agencies during 2003–04. They were the Department of Immigration and Multicultural Affairs (14,200 determinations), Centrelink (10,755 determinations) and the Department of Veterans' Affairs (10,638 determinations). The great majority of those requests were for personal information.

4.16 In order to provide a general indication of response times (as per the A-G's FOI Annual Reports) for the processing of FOI requests, the 22 agencies involved in this investigation have been placed into one of three groups:

- **Participating agencies receiving a majority of personal FOI requests:**
 - Australia Post
 - Centrelink
 - Department of Defence
 - Department of Employment and Workplace Relations
 - Department of Immigration and Multicultural Affairs
 - Department of Veteran's Affairs.

- **Participating agencies receiving a general mix of personal and other-than-personal FOI requests:**
 - Australian Crime Commission
 - Australian Federal Police
 - Australian Securities and Investments Commission

²⁴ Australian National Audit Office, *Administration of Freedom of Information Requests*, Audit Report No 57 of 2003–04, June 2004 at Art 2.42.

- Australian Tax Office
- Department of Communications, Information, Technology and the Arts
- Telstra Corporation.
- **Participating agencies receiving a majority of other-than-personal FOI requests:**
 - Australian Competition and Consumer Commission
 - Australian Maritime Safety Authority
 - Australian Prudential Regulation Authority
 - Department of Education, Science and Training
 - Department of Family and Community Services (including the Child Support Agency)
 - Department of Finance and Administration
 - Department of Industry, Tourism and Resources
 - Department of Prime Minister and Cabinet
 - The Treasury.

Table 4—Response times for participating agencies receiving a majority of personal FOI requests

Period	Total requests	Within 30 days	31–60 days	61–90 days	Over 90 days
2001–02	30,894	23,613 (76%)	4,666 (15%)	1,383 (5%)	1,232 (4%)
2002–03	34,025	24,821 (73%)	4,804 (14%)	2,051 (6%)	2,349 (7%)
2003–04	35,894	27,056 (75%)	4,450 (12%)	1,747 (5%)	2,641 (7%)

Table 5—Response times for participating agencies receiving a general mix of personal and other-than-personal FOI requests

Period	Total requests	Within 30 days	31–60 days	61–90 days	Over 90 days
2001–02	1,073	822 (77%)	154 (14%)	63 (6%)	34 (3%)
2002–03	1,008	611 (61%)	188 (19%)	61 (6%)	148 (15%)
2003–04	972	629 (65%)	189 (19%)	82 (8%)	72 (7%)

Table 6—Response times for participating agencies receiving a majority of other-than-personal FOI requests

Period	Total requests	Within 30 days	31–60 days	61–90 days	Over 90 days
2001–02	350	167 (48%)	88 (25%)	41 (12%)	44 (13%)
2002–03	391	189 (48%)	96 (25%)	43 (11%)	63 (16%)
2003–04	474	272 (57%)	124 (26%)	40 (8%)	38 (8%)

Observation

4.17 In general, an agency has 30 days from the day after an FOI request is received during which to process it. Where an agency is considering the release of a document that concerns a State Government, the business affairs of a commercial organisation or individual personal information about an individual (a third party), that time limit can extend to 60 days, in accordance with ss 26A, 27 or 27A of the FOI Act. The extension is to allow for consultation with third parties, which is required under those provisions. The decision period 'clock' also stops between notification of the imposition of charges and a response from the applicant. However, negotiations with an applicant on the scope of a request and full or partial transfers of a request to another agency have no effect on the statutory processing period.

4.18 Before the FOI Annual Report for 2004–05, it was not recorded whether an agency responding to a request within the 31–60 day period had or had not exceeded the statutory timeframe. With the tabling of the 2004–05 FOI Annual Report in December 2005, that information is now included. Nevertheless, from the data presented in Table 4 it can be seen that there has been a proportional increase in the number of personal FOI requests taking more than 60 days to process: from in the order of eight per cent in 2001–02 to 12 per cent in 2003–04. Moreover, there are proportionally more 'other-than-personal' FOI requests taking more than 60 days to process than is the case for personal FOI requests. In 2003–04 the respective proportions were in the order of 17 per cent and 12 per cent respectively.

PART 5—INVESTIGATION RESULTS—FOI CO-ORDINATION, GUIDELINES AND TRAINING

5.1 Data obtained from each of the 22 agencies involved in the investigation included how agencies coordinated the processing of FOI requests and by what means each agency provided training and internal guidelines to their FOI practitioners.

FOI co-ordination

5.2 Three main FOI management methods emerged among the agencies involved in the investigation:

- **Centralised:** This method encompassed agencies that had adopted centralised receipt, recording, coordination and decision-making of FOI requests (usually within a legal section of the national office). Of the 22 agencies involved in this study, eight have adopted this method. They include three agencies that receive fewer than 25 FOI requests per year, two with fewer than 110 requests and three with fewer than 325 requests per year.
- **Centralised coordination with decentralised decision-making:** This method encompassed agencies that had adopted centralised receipt, recording and coordination of FOI requests, but with decision-making devolved to line areas. Of the agencies involved in the investigation, seven have adopted this method. They include five agencies that receive fewer than 50 FOI requests per year, one with less than 200 requests and one with fewer than 500 requests per year.
- **Decentralised:** This method encompassed agencies that had adopted decentralised receipt, recording, coordination and decision-making—either to regional offices or line areas. Where this system has been adopted, there invariably will be an FOI adviser at the national office who is available to provide expert advice and coordinate agency policy. Of the agencies involved in the investigation, seven had adopted this method. They include three agencies that receive fewer than 35 FOI requests per year, one with fewer than 325 requests and the three major FOI recipient agencies with between 10,000 and 14,200 requests per year. Of those three major recipient agencies, one has adopted a variant of the decentralised method—it processes the relatively few non-personal requests it receives centrally at its national office in Canberra.

Observation

5.3 In general, agencies that have adopted a centralised approach to the coordination of FOI matters have better administrative practices than agencies employing other methods. This is largely because, in non-centralised arrangements, it is often difficult to maintain an appropriate level of FOI training for line managers, which can sometimes result in missed deadlines and inconsistent decision-making.

FOI guidelines and training

5.4 All of the agencies participating in the investigation appeared to have some form of documentation to assist in the processing of FOI requests. At the minimum—and this generally applied to agencies receiving a small number of FOI requests each year—this was

simply in the form of generic training documentation obtained from one or more of the FOI training courses provided by AGS. At the other end of the scale, some agencies had produced comprehensive agency-specific training manuals, instructions, checklists, standard letter templates, decision-maker guidelines and flow charts. For some agencies, it was pleasing to note that FOI guidelines and checklists were readily available on the agency's intranet.

5.5 In addition to using AGS courses to train FOI practitioners, at least three of the participating agencies provided in-house FOI training. Two of the participating agencies used an external training resource other than AGS. At least one of the larger agencies used a monthly teleconference for its FOI practitioners to discuss FOI-related matters. Two agencies had developed their online information management system to monitor FOI requests against a checklist.

Observation

5.6 Comprehensive FOI guidelines and checklists should be readily available to all agency FOI practitioners. This investigation revealed that some agencies had developed comprehensive guidelines and checklists that would likely be useful to other agencies, were those FOI resources to become more widely available.

PART 6—INVESTIGATION RESULTS—AGENCY FOI FILES

6.1 Depending on the size of the agency, between six and 17 randomly selected FOI files were examined from each of the 22 agencies involved in the investigation. This examination revealed that most of the agencies had good administrative practices in place for the processing of FOI requests—through such means as ensuring that FOI practitioners had attended appropriate FOI training courses provided by the AGS and by following the guidelines contained in FOI Memoranda produced by A-G's. On the other hand, the examination also revealed some particular areas of concern. They included:

- a lack of consistency in acknowledging requests in a timely fashion
- delays in notifying charges, and inconsistency in the calculation of charges
- excessive delays in processing requests
- a variable quality in the standard of decision letters, particularly regarding the explanation of exemptions imposed.

Acknowledging requests in a timely fashion

6.2 Section 15(5)(a) of the FOI Act requires that an agency or Minister take all reasonable steps to acknowledge the receipt of a request as soon as practicable, but in any case not later than 14 days after the day on which the request is received.

6.3 Of the 22 participating agencies:

- nine agencies appeared to have acknowledged all FOI requests contained on the files examined within the required 14 days
- eight agencies had instances of one or two late acknowledgements
- four agencies had instances of between three to five late acknowledgements; some of the delays extended to more than 50 days after the date of receipt
- the files of one agency contained no evidence that five of the 14 FOI requests examined had ever been acknowledged; there were also some isolated instances in the files of four of the other 21 agencies of requests not being acknowledged.

On a positive note, one agency had developed its computerised client management system to support FOI processing. This enables automated prompting to send timely acknowledgement letters.

Observation

6.4 In general, there appear to be three main reasons for the late acknowledgement, or the absence of acknowledgement, of FOI requests:

- poor administrative procedures that allow for delays from the moment of arrival of an FOI request in an agency to when it is eventually acknowledged in the designated FOI processing area
- the request may be ambiguous, unclear, or appear too broad in its scope
- the request may not comply with the statutory requirements in s 15(2) of the Act and therefore the processing period does not start.

6.5 In relation to these possibilities:

- the time in which to respond to an FOI request commences from the day after a request is received in an agency, not from when it is received in the area where the request is processed
- an agency is still required to acknowledge a request within 14 days, and it would be feasible and sometimes desirable to do this at the same time as consulting the applicant in relation to breadth (s 24(1) of the FOI Act) or specificity (s 15(2)(b))
- agencies are required by s 15(3) of the Act to take reasonable steps to assist the applicant to make a valid request. If the applicant has neither paid a fee nor sought remission, the agency should invite the applicant to do so. If the applicant has made an otherwise valid request, and has applied for remission of the application fee, s 30A requires the agency to make a decision on that application within thirty days. If the agency decides not to grant remission, it should tell the applicant as soon as possible, so as to allow the applicant to pay the fee to enable the application to be processed. In one particular case, an agency took four months to advise an applicant that a fee was still required in order to make a request valid.

Notification of fees and charges

6.6 Section 29 of the Act and the Freedom of Information (Fees and Charges) Regulations provide the authority for FOI application fees and charges for contributing to the cost of processing individual requests. For example, a fee of \$30 is payable when a request is lodged and \$40 is payable when making application for internal review. The Regulations also provide that, except for some limited and specified circumstances, an applicant is not liable for fees and charges in respect of a request for his/her own personal income support documents. Additionally, the Regulations place a ceiling on the amount of charges that can be applied for documents containing the applicant's own personal information.

6.7 Section 30A of the FOI Act provides that an application fee may be remitted (fully or partially) for any relevant reason, including where payment of that fee would cause financial hardship to the applicant (or the person on whose behalf the application was made) or when the provision of the requested information would be in the general public interest, or be in the interest of a substantial section of the public. This section of the Act confers a discretion and does not require the automatic remission of fees in situations where the requested documents are related to the applicant's personal information. Nonetheless, the agency involved may take this factor into consideration.

6.8 The FOI Act provides for FOI charges to be imposed. However, s 29(5) of the Act does require the agency or Minister to consider whether the payment of such a charge could be reduced or not imposed in cases of financial hardship or when the provision of the requested documents would be in the public interest or in the interest of a substantial section of the public. The level of fees and charges provides for partial but not full cost recovery by agencies, and is designed to ensure that users of the FOI Act make a contribution towards the cost of providing FOI access to documents. FOI fees and charges have not increased since November 1986.

6.9 FOI Memorandum No 29—Fees and Charges—outlines the government's policy in relation to the imposition of fees and charges and provides guidance on what is meant by 'financial hardship' and 'public interest'. In part, this Memorandum states that there should be no application fee in respect of a s 48 request to annotate or amend records of personal information. However, in general, agencies have full discretion under the FOI Act as to whether or not to reduce or not impose charges, or to remit a fee. In exercising that discretion, agencies are required to take account of s 3(2) of the FOI Act, which requires that

such discretions 'shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information'.

6.10 This investigation found considerable variation in agency imposition of fees and charges. In one of the major FOI recipient agencies, application fees are automatically remitted in cases where an applicant applied for personal information. In another agency, application fees are remitted on request for first occasion requests for personal information. In a third agency, application fees are often waived 'for administrative reasons' and charges not always applied. In at least two other agencies, fees and charges are waived whenever considerable delays occurred in the processing of applications.

6.11 Delays in forwarding request-for-charges letters were also not uncommon. There were instances of this in seven of the participating agencies. In two cases, a charges letter had been sent to the applicant only during the final week of the 30-day allocated processing period. In a further six cases, charges letters had been sent out after the 30-day point had already elapsed (two being at the two-month point and a third being at the five-month point).

6.12 Many of the request-for-charges letters were of variable quality. Some provided a comprehensive breakdown of the anticipated charges for processing an application—providing applicants with sufficient information to make an informed decision on whether or not to proceed with an application. Other letters contained figures for charges that were not adequately explained.

Observation

6.13 Agencies are not consistent in their practices around waiving and remitting application fees, and the imposition of processing charges. This matter was recognised and covered in some detail in sections 4.17–4.32 of the ANAO's 2004 report, *Administration of Freedom of Information Requests*. The Ombudsman supports the ANAO recommendation that existing guidelines regarding fees and charges be updated in order to provide more comprehensive guidance.

6.14 An associated matter is that of lapsed applications, which apply in situations where an applicant does not pay the required application fee or specified charges, and the agency subsequently deems the application to have lapsed. The Ombudsman recommends that an applicant should be formally advised whenever a request is deemed to be withdrawn. Some agencies might, however, consider such action to be an unnecessary administrative burden. If so, at the very least it is recommended that a note be placed on the applicant's file to the effect that a conscious decision has been made to consider the request to have lapsed.

Processing requests

6.15 Section 15(5)(b) of the FOI Act requires that an agency or Minister must take all reasonable steps to notify the applicant of a decision as soon as practicable, but in any case not later than 30 days after the day on which the request is received. These 30 days are calendar days computed from the day after the request is received. This 30 day time period may be extended to a maximum of 60 days if an agency or Minister determines in writing that consultation with an individual person, a State Government or a business organisation is appropriate under ss 26A, 27 or 27A of the Act.

6.16 The relatively small number of randomly selected agency FOI files that were examined did not necessarily provide a statistically valid sample of that agency's overall approach to the processing of FOI requests, but they did confirm the perception that some

agencies are better able to meet the prescribed time limits for processing requests than others:

- two agencies managed to process 90 per cent or more of the files examined within the required time period (one agency had processed all 15 requests examined on time and the other agency had managed to do so for 14 out of 15 requests)
- twelve agencies managed to process between 66 per cent and 90 per cent of examined requests on time
- five agencies only managed to process between 33 percent and 66 percent of examined requests on time
- three agencies managed to process only 33 per cent or less of examined requests within the required time period (two of those agencies had exceeded the time period for seven out of nine requests and the other agency had done so for 12 out of 14 requests).

6.17 In general, the reasons for agency delays can be summarised as either administrative, resource-related or a combination of both. Administrative delays noted by the investigation included those caused by:

- poor record keeping, resulting in misplaced or lost files
- files containing collections of loose or stapled-together documentation
- missing documentation on file
- the need to process documents between regional and national offices in some decentralised systems
- agency FOI tracking systems not always able to identify specific FOI files (one particular agency had three different computer systems used for tracking files).

6.18 Resource-related delays often occur when agencies are required to deal with large and complex FOI requests, particularly on policy-related matters. Such delays can often be exacerbated during periods of temporary staff shortages, particularly around holiday periods when the requirement to meet a 30-calendar day timeline can be difficult.

Observation

6.19 While all agencies are obliged to respond to and process FOI requests within the time limits prescribed by the FOI Act, some agencies are better able to meet that obligation than others. It is recommended that agencies pay particular attention to the administrative procedures they have adopted to process FOI applications. In this respect, it is noted that an applicant's FOI file should be a complete record of the steps taken to process a request and in particular should contain:

- correspondence to and from the applicant
- correspondence to and from any other parties
- file notes of conversations with the applicant and external parties
- records of searches
- folio numbering of all documentation on file.

6.20 If an unexpected resource-related delay seems likely to occur, the agency should keep the applicant informed and negotiate an amended response date. Where resource-related delays have become commonplace, agencies should examine whether the FOI

processing section is simply under-resourced. Finally, whenever possible, it is recommended that agencies attempt to meet requests for information outside the FOI Act, in accordance with s 14 of the Act.

Decision letters

6.21 Where a request for access to documents is not granted, either in whole or in part, s 26 of the Act requires that the applicant be provided with notice in writing of that decision. In such decision letters, it is not sufficient merely to claim an exemption by quoting the relevant section of the Act. Full reasons must be provided by the decision maker, who is required under s 26(1)(a) to 'state the findings on any material questions of fact, referring to the material on which those findings were based'. Guidance on meeting the requirement for such 'statement of reasons' is provided in FOI Memorandum No 26, dated 30 June 1993.

6.22 Table 2 of FOI Memorandum No 26 provides a checklist and guidance on matters that should be dealt with in a statement of reasons. They include:

- notice in writing of the decision
- name and designation of decision maker
- findings on any material questions of fact
- reference to the material on which the findings of fact were based
- reasons for the decision
- information regarding rights of review and rights to complain to the Ombudsman
- in cases where a complete document has been refused, whether consideration has been given to providing an edited version
- whether consideration has been given to releasing the document outside the FOI Act.

6.23 Of the FOI files examined from the 22 participating agencies, it was noted from the files that:

- seven agencies met s 26 requirements
- nine agencies mostly met s 26 requirements
- six agencies often did not meet s 26 requirements.

6.24 The most common problem was that exemptions were not always fully or adequately explained. In addition to a number of instances of simply quoting a section of the Act without further explanation, there were also several instances of an inadequate consideration of the 'public interest' test, where this was applicable. Other problem areas included:

- a list of the material examined upon which the decision-maker relied was not provided
- appeal rights were not mentioned
- the authority and/or identity of the decision-maker was not provided
- information was provided to the applicant well after the date of decision (in one instance, there was a 45 day delay).

Observation

6.25 A reasoned explanation for a decision is a key element of good decision-making in all areas of administration. The Commonwealth administrative law reforms of the 1970s and 1980s placed particular emphasis on the reasoning process lying behind a decision. A well-considered and comprehensive statement of reasons is now a central requirement for any decision that is subject to administrative review. In an FOI context, statements of reasons should display a consideration of arguments favouring release as well as against, particularly where an express or implicit public interest balancing test applies.

Agency responses to the Ombudsman's draft findings

6.26 As earlier noted, the Ombudsman's office provided each of the participating agencies with a summary of results as it applied to that particular agency. This office acknowledged that there may have been improvements in an agency's approach to the processing of FOI requests since 2001 to 2004, which was the period examined in the investigation. Indeed, it was pleasing to receive responses from five agencies noting that they had introduced improvements to FOI processing during that interim period. Some indicative and edited examples of those responses include:

- 'I would like to express my sincere gratitude for the opportunity to provide this response. As you are aware, the organisational structure of the [Legal Branch] was significantly reshaped in December 2003, with the establishment of a dedicated national stream responsible for handling FOI requests. Our procedures have also been under intensive scrutiny since that time. This has resulted in significant improvements to both the responsiveness and quality of our decision making in the time since you undertook the information-gathering phase of your project.'
- 'As noted in your letter, the information-gathering phase of the project took place between May and August 2004 and some of the files examined are now several years old. Since then [this agency] has achieved efficiencies in relation to processing requests under the Act. [This agency] is centralising accountability for the Freedom of Information processing ... within the [Legal Branch]. This will allow the FOI policy team to maintain control over FOI processing.'
- 'In mid 2004, [this agency] reviewed its FOI procedures and appointed a dedicated and trained FOI Coordinator to manage FOI requests received in [this agency].'

6.27 Also pleasing to note in the many responses received from participating agencies were statements of an ongoing and positive commitment to the FOI process:

- '[This agency] takes its obligations under the FOI Act seriously and appreciates the value of your office conducting an "own motion" investigation into FOI practices ... We look forward to seeing the recommendations that come out of your survey and assure you that [this agency] is committed to continually improving its FOI procedures.'
- '[This agency] welcomed the inquiry, viewing it as an opportunity to closely examine processes regarding access to documents held by the agency ... [This agency] is committed to maintaining an effective control structure to ensure FOI legislation, and the spirit of the legislation, permeates our operational plans, policy, processes and procedures.'
- 'I understand that your report on [this agency's] administration of FOI requests to be, on the whole, quite positive and complimentary. This is pleasing, because, while acknowledging that there will always be room for improvement in performance, [this

agency] takes its FOI responsibilities seriously ...Your investigation provides timely and helpful indications of aspects of FOI administration that will need to be addressed in our training and in fine-tuning our processes.'

- 'In recognition of the importance of consistent and appropriate handling of FOI requests, [This agency] appointed a full-time FOI Coordinator some 18 months ago. With the more systematic and coordinated approach to FOI matters that this position has brought, I believe that our FOI practices have significantly improved and many of the matters identified in your report have been specifically addressed ... Once again, thank you for the opportunity to respond to your evaluation of our FOI practices. We have found it an instructive and open process and look forward to receiving a copy of your final report.'

PART 7—PROPOSALS FOR THE FUTURE ADMINISTRATION OF THE FOI ACT

Current problems

7.1 This own motion investigation undertaken by the Commonwealth Ombudsman has, like the earlier FOI own motion report of 1999, highlighted both specific deficiencies and good practice in the administration of FOI by some Australian Government agencies. The deficiencies include:

- excessive delay in the processing of some FOI requests
- the requirements of s 9 of the FOI Act not being met
- lack of consistency in acknowledging requests in a timely fashion
- delay in notifying charges and inconsistencies in their application
- variable quality in the standard of decision letters, particularly regarding the explanation of exemptions imposed.

7.2 Most of these findings confirm what is readily apparent from a perusal of recent A-G's FOI Annual Reports—there are discrepancies between agencies concerning the way they process FOI requests. There are, for example, considerable variations between agencies in their overall ability to process FOI requests within the required 30-day period. At the two extremes, one agency in this inquiry achieved only a 31 per cent success rate, whilst another managed a success rate of 94 per cent. Discrepancies such as these might indicate that there could be a cultural resistance to FOI within some agencies. It might also indicate that agencies receiving a preponderance of 'personal information' type FOI requests are more easily able to process these within prescribed time frames than those agencies that receive FOI requests that are primarily related to policy development or government decision-making.

7.3 Another possibility—and more worrying—is that good FOI administration is of dwindling importance, in some agencies at least. Possibly this arises when government agencies face increasing pressures and competing demands on their time and resources. There is also a risk over time that the spirit of commitment and optimism that supports innovative legislation such as the FOI Act will dampen unless there is a continuing reaffirmation of the importance of the legislation.

7.4 There is a growing emphasis on the need for consistency across government in service delivery. The same arguments can be applied to FOI administration. It is unacceptable that members of the public can encounter quite different standards in FOI administration, depending on the agency they approach. This invites public frustration and discontent with government, and doubt as to the commitment of all agencies to provide service to the public. Across government, FOI administration must proceed on the basis that FOI is a legal obligation imposed for the benefit of the public and designed to bolster the democratic accountability of government. FOI should be afforded the same high priority and strict compliance that is given to other pieces of defining legislation, such as that dealing with financial management.

7.5 A particular problem of growing significance is the interaction between FOI and privacy obligations within government. An issue raised many times in the course of this

inquiry is that the obligation of agencies to protect the privacy of individuals can cut across their FOI obligations. FOI and privacy legislation both regulate how information is to be handled within government, but with different objectives. The emphasis on protection and non-disclosure of information is far stronger in privacy legislation, albeit according to specific statutory criteria. Many FOI requests have privacy implications—particularly where the documents relate to the interests of a third party—and the need can arise in those requests to balance conflicting demands of privacy and open government. There is a Privacy Commissioner with responsibility for the oversight and enforcement of the Privacy Act, and the power to provide guidance to agencies, carry out audits, investigate complaints, conduct own motion investigations and to make determinations enforceable through the Federal Court. There is no similar office designated under the FOI Act with a matching responsibility.

Achieving better FOI practices

7.6 This and other studies have shown that administrative problems are a continuing concern in FOI administration. But equally, in pointing to the importance that FOI holds in the scheme of government, the studies also show that FOI need not be a problem and a resource drain for agencies. This study found many examples of a strong and vibrant commitment by FOI personnel in agencies. Generally, the Australian Government is blessed with a strong band of FOI practitioners in government. It is also pleasing that many agency heads personally responded and gave their support and commitment to FOI.

7.7 A common finding in studies of this kind is that the vitality and success of the FOI scheme depends heavily on the way it is administered within agencies. Smooth and committed administration reduces problems and tension, and supports a strong commitment to FOI and open government. The obverse is also true. It can generally be said that FOI administration in an agency will be more reasonable and efficient if the agency:

- maintains a good quality and current statement under s 9 of the FOI Act and takes every opportunity to explain how an FOI request might be made
- scrutinises all incoming correspondence to see whether a correspondent is making or attempting to make an FOI request or seeking advice about how this might be done
- assists applicants to make valid applications
- (generally) maintains a centralised system, at least for the purpose of monitoring the receipt and progress of FOI requests and providing guidance to staff dealing with requests
- prepares a set of procedures accessible by all staff (especially decision-makers and those who assist them) about the processing of FOI requests, including consultation processes and when, for example, it is proper to consult a Minister's office or to transfer a request
- issues guidance on the process and principles that should inform decisions about fees and charges
- encourages decision-makers to liaise with FOI applicants so as to understand their needs (and ensure that the agency's priorities are explained) and to avoid delay, complexity and formality
- checks decision letters so as to ensure that they identify the documents considered (in a schedule if there are more than a few) and the statutory and factual bases for any exemptions.

7.8 By contrast, an agency will experience difficulties if it:

- allows formal or informal FOI requests to remain unactioned and unacknowledged
- imposes fees and charges on an inconsistent or unpredictable basis, or greatly overestimates charges (leading to justifiable suspicion about motives)
- allows decisions to be made on an ad hoc basis by untrained and unsupported staff without any scrutiny
- avoids any contact with the FOI applicants
- fails to advise applicants of review and complaint rights
- fails to identify in a statement of reasons the range of documents considered (eg the date range and whether electronic documents have been considered)
- makes decisions that simply assert, without amplification, the application of a specific exemption.

An FOI Commissioner

7.9 Earlier in this report it was noted that the joint ALRC/ARC *Open Government* report produced in 1995 had observed that a significant problem with FOI administration was the lack of a designated single independent person or organisation with responsibility for overseeing the administration of the FOI Act. That earlier report found that many of the FOI shortcomings revealed could be attributed to the lack of a constant, independent monitor of and advocate for FOI. To overcome this deficiency, the report recommended that a statutory office of FOI Commissioner should be created to monitor and improve the administration of the FOI Act:

[T]he appointment of an independent person to monitor and promote the FOI Act and its philosophy is the most effective means of improving the administration of the Act. The existence of such a person would lift the profile of FOI, both within agencies and in the community and would assist applicants to use the Act. It would give agencies the incentive to accord FOI the higher priority required to ensure its effective and efficient administration.²⁵

7.10 The *Open Government* report recommendation to create an office of FOI Commissioner was supported by the Commonwealth Ombudsman at the time it was made, and continues to be supported. The FOI Act is in need of more central direction and coordination. As was stated in the Commonwealth Ombudsman's submission to the Senate Legal and Constitutional Legislation Committee's inquiry into the *Freedom of Information Amendment (Open Government) Bill 2000*, the Act needs a "public face"—someone who can contribute to official and public debate about information disclosure and who can ensure that agencies pay more than grudging lip service to FOI'.²⁶

7.11 The ALRC/ARC report considered whether the proposed FOI Commissioner could be established within an existing organisation or should be established as a separate statutory position. It recommended the latter option. The report had considered a number of possible contenders for subsuming the role of FOI Commissioner, including A-G's, the Privacy Commissioner and the Commonwealth Ombudsman. However, each of those particular agencies was discounted for the reasons set out below.²⁷

²⁵ *Open Government* at para 6.4.

²⁶ Senate Legal and Constitutional Legislation Committee, *Inquiry into the Freedom of Information Amendment (Open Government) Bill 2000*, April 2001 at p 44.

²⁷ *Open Government* at para 6.29.

- A-G's—not sufficiently independent of the government and agencies subject to the Act.
- Privacy Commissioner—there is a need to ensure that the principles of openness and privacy each have a clearly identifiable and unambiguous advocate—were the Privacy Commissioner to be given the role of FOI Commissioner, there is a risk that FOI would become the 'poor cousin', given the propensity for some agencies to favour secretiveness over openness.
- Ombudsman—although a number of organisations considered that the Ombudsman could, with expanded powers and resources, perform the role of FOI Commissioner, a majority of the Review members felt that this additional role would not sit well with what was seen to be the agency's primary role of complaint resolution; moreover, the Ombudsman's role in maintaining the integrity of Government could be compromised were that office to assume responsibility for administering particular legislation, other than the *Ombudsman Act 1976*.

The broadening role of the Commonwealth Ombudsman

7.12 The role of the Commonwealth Ombudsman has, over time, become more than just the investigation of complaints about Australian Government administrative action. In keeping with the Ombudsman's general role of fostering good public administration within Australian Government agencies, the office has steadily undertaken new oversight responsibilities.

7.13 In 1995, the Ombudsman was designated as the Taxation Ombudsman (Ombudsman Act s 4(3)). In addition to handling Australian Tax Office complaints, the role involves the provision of assistance and advice to taxpayers on matters of taxation legislation. More recently, the Ombudsman has adopted a new role of Immigration Ombudsman under changes to legislation that provides the office with a substantially enhanced capacity to oversight the administration of the *Migration Act 1958* (Ombudsman Act s 4(4)). Legislation is also before Parliament that is expected to give to the Ombudsman the additional role of Postal Industry Ombudsman.

7.14 The Ombudsman's role in auditing statutory compliance by agencies in selected areas has also contributed to the broadening of the Ombudsman's role beyond the routine investigation of complaints. The office is responsible under the *Crimes Act 1914*, *Telecommunications (Interception) Act 1979* and *Surveillance Devices Act 2004* for monitoring whether there is compliance with those Acts in the records maintained by the Australian Federal Police and the Australian Crimes Commission concerning telecommunications intercepts, use of surveillance devices and controlled (covert) operations. More recently, under s 105.8 (8) of the *Anti-Terrorism (No. 2) Act 2005*, the senior Australian Federal Police member making an initial preventative detention order must:

- notify the Commonwealth Ombudsman in writing of the making of the order
- give the Commonwealth Ombudsman a copy of the order
- if the person in relation to whom the order is made is taken into custody under the order—notify the Commonwealth Ombudsman in writing that the person has been taken into custody under the order.

The Commonwealth Ombudsman and the role of FOI Commissioner

7.15 As earlier noted, in April 2001, the Senate Legal and Constitutional Legislation Committee in its inquiry into the *Freedom of Information Amendment (Open Government) Bill*

2000 recommended that the functions of the FOI Commissioner outlined in the Bill 'be conferred on the Commonwealth Ombudsman and that a specialised unit be established within that office for the purpose of supporting the Commonwealth Ombudsman in that role'. The inquiry further recommended that 'funding and resources be directed to the Commonwealth Ombudsman's office for the purpose of establishing the FOI unit and enabling the Commonwealth Ombudsman ... to properly oversight the administration of the FOI Act'.²⁸

7.16 The argument that led the Committee to reach that decision primarily centred upon problems that tend to confront small, statutory agencies that are established to perform specialised functions, such as overseeing government and handling complaints. In his own submission to the Committee, the then Commonwealth Ombudsman had stated:

[S]mall and specialised agencies can experience problems in competing for resources and in allocation of those resources. They can be limited geographically and find difficulties in managing the peaks and troughs of workflow. They can be perceived to be too readily 'captured', either by the bureaucracy or by elements of the relevant community. They may experience difficulty in obtaining and maintaining a sufficient public profile to enable their views to carry the necessary weight.

As well, the proposed Commissioner would be operating in a field already occupied to a considerable extent by the National Archives of Australia, the Attorney-General's Department and the Australian Government Solicitor (as a provider of some FOI liaison). This may create problems of delineation and demarcation (for example, the Commissioner would be a 'prescribed authority' whose actions the Ombudsman could investigate) and may confuse agencies and the public about where responsibility lies.²⁹

7.17 A further factor leading the Committee to recommend that the Ombudsman assume the functions of FOI Commissioner was an acknowledgment that the Commonwealth Ombudsman's office already had the substantial infrastructure in place to support the establishment of such an additional role. Moreover, the Ombudsman already has a close involvement with FOI across all government agencies.

7.18 The Committee's recommendations were incorporated into a revised version of the Bill, which was introduced into the Senate two years later as the *Freedom of Information Amendment (Open Government) Bill 2003*.³⁰ During the Second Reading of the Bill, its proposer, Senator Andrew Murray, noted:

The Senate Legal and Constitutional Committee accepted the need for an oversight agency such as an FOI Commissioner, recommending that the role be conferred on the Commonwealth Ombudsman. That recommendation has been adopted in this Bill. ...

The proposed FOI Commissioner will provide, for the first time, an independent and effective check on the administration of the Act.³¹

7.19 The Bill, which was deferred for further debate, remains on the current Bills List at the Senate Table Office.

²⁸ Senate Legal and Constitutional Legislation Committee, *Inquiry into the Freedom of Information Amendment (Open Government) Bill 2000*, April 2001 at p 58.

²⁹ *Submission 17* (Commonwealth Ombudsman) to the Senate Legal and Constitutional Committee, *Inquiry into the Freedom of Information Amendment (Open Government) Bill 2000*, April 2001 at p 10.

³⁰ A copy of this Bill may be viewed at:

<http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/Bills/Linked/09110507.pdf>

³¹ CPD (Senate), 25 June 2003 at 12527–12529.

Part 8—Conclusion

8.1 The Commonwealth Ombudsman endorses the view that FOI reform at the Australian Government level is overdue. This own motion investigation has revealed that compliance with the FOI Act amongst the 22 participating agencies, particularly with regard to timeliness in the processing of FOI requests and in the standard of decision letters, is variable and certainly wanting in some areas. Some agencies are displaying a clear commitment to FOI and are supportive of the overall objective of the Act, which is to extend as far as possible the right of the Australian community to access information in possession of the Government; other agencies are falling short of that standard.

8.2 This investigation supports the view that the FOI Act works well in facilitating public access to personal information, but not so well in providing access to policy-related information. The investigation also supports a view that there is an uneven culture of support for FOI among government agencies.

8.3 There is a responsibility on each agency to ensure that its FOI administration meets both the requirements and the goals of the FOI Act. As a step in that direction, it is **recommended** that each agency head issue a clear statement to staff expressing a commitment to sound FOI practice and the goals of the FOI Act, having regard to the kinds of good and bad practice identified in this report.

8.4 Many of the shortcomings in the current operation and effectiveness of the Act could be addressed through the activities of a constant, independent monitor of and advocate for FOI. This is by no means an unexpected finding, for the matter has already been canvassed in some detail by such bodies as the Australian Law Reform Commission, the Administrative Review Council, the Commonwealth Ombudsman, and the Senate Legal and Constitutional Legislation Committee. There is consensus among those bodies that a statutory FOI Commissioner needs to be created who would play an active role in publicising the legislation's existence, monitor compliance with its provisions and promote its effective operation. The responsibilities of such a position might include:

- auditing the compliance of agencies with the FOI Act
- collecting statistics on FOI requests and decisions and preparing an annual report on FOI (currently an A-G's responsibility)
- publicising the Act in the community
- issuing guidelines on how to administer the FOI Act
- making determinations about the scale of charges applying to requests for access to information under the FOI Act
- providing or overseeing FOI training to agencies
- providing information, advice and assistance in respect of FOI requests
- providing legislative policy advice on the FOI Act.

8.5 It is **recommended** that the Government consider establishing an FOI Commissioner, possibly as a specialised and separately funded unit in the office of the Commonwealth Ombudsman. As earlier outlined in this report, there are advantages in the functions of an FOI Commissioner being assumed by an existing agency, rather than establish a small new specialised agency to take on that role. As to the office of Commonwealth Ombudsman as an option, the office is independent, has a substantial infrastructure already in place and an existing close involvement with FOI across all government agencies, sufficient for it to assume the role of FOI Commissioner.

ATTACHMENT A

Tables

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Acronyms and Abbreviations

AAT	Administrative Appeals Tribunal
AATA	Administrative Appeals Tribunal decisions on Austlii
AFP	Australian Federal Police
AGPS	Australian Government Publishing Service
A-G's	Attorney-General's Department
AGS	Australian Government Solicitor
ADJR	Administrative Decisions (Judicial Review)
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
ARC	Administrative Review Council
CPD	Commonwealth Parliamentary Debates (Hansard)
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1982</i>
FOIAPPS	FOI Applications (an Attorney-General's Department administered email discussion network for Government agency FOI practitioners)
NAA	National Archives of Australia
Ombudsman	Commonwealth Ombudsman