

The report focuses on the level of compliance with the *FoI Act* by a sample of agencies. The agencies were selected on the following criteria:

- all agencies received a significant number of *FoI* applications;
- the agencies were subject to *FoI* related complaints;
- most were major public sector organisations constituting:
  - 28 councils
  - 20 ministerial offices
  - 9 area health services
  - 4 universities
  - various accountability/watch dog bodies.

Relevant annual reports were examined and an assessment was made as to whether the information complied with *FoI* reporting requirements, statistics gained being tabulated and assessed. These statistics were then compared with the NSW 1989/90 Annual Report as well as other jurisdictions within Australia.

The Report revealed that the majority of agencies were failing to comply with *FoI* annual reporting requirements either completely or to a significant degree. In total, 52% of agencies did not meet the expected standards: 13% of these completely failing to comply, and 39% inadequately complying. Only 19% fully complied.

It was also revealed that access to information by the public in NSW was under utilised with most agencies receiving less than eight *FoI* applications in 1995/96. A comparison with other Australian States revealed that NSW received proportionally fewer *FoI* applications per head of population than other jurisdictions. Of the applications that were received, 92.3% of applicants received all or some of the documents requested with only 6.7% of applications being rejected.

The Ombudsman suggests that where possible, agencies should informally and routinely disclose information. They should identify any documents which they are required by law to make available for inspection and purchase, classify them and identify those that can be released. By identifying commonly requested categories of documents it may be possible to determine whether it

is unnecessary to deal with such requests formally under the Act. In relation to formal disclosure, the Ombudsman suggests that the spirit of the legislation encourages disclosure of as much information as possible and that agencies should therefore exempt only the minimal amount of documentation necessary for the effective functioning of government.

As a result of the findings the following recommendations were made:

- (1) That the Premier re-establish the *FoI* unit within the Premiers Department;
- (2) that the functioning of the Unit include:
  - (a) promoting *FoI* in NSW
  - (b) providing advice and education on *FoI*
  - (c) regularly reviewing and updating the *FoI* Procedure Manual
  - (d) monitoring the implementation of *FoI* by NSW public sector organisations
  - (e) collecting and analysing statistics and reporting them to parliament
  - (f) reviewing the format and content of the *FoI* sections of agency annual reports; and
  - (g) reviewing the operation of the *FoI Act* and Regulations
- (3) that, as an alternative, the Office of the Ombudsman be authorised and funded to perform the functions listed in (2).

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#### References

1. ALRC/ARC. 'Open Government: A Review of the Federal Freedom of Information Act 1982', 1996.
2. Sheridan, Helen and Snell, Rick, 'Secrecy: Report of the US Commission on Protecting and Reducing Government Secrecy', (1997) 69 *FoI Review* 36-40.
3. Townley, Helen and Snell, Rick, 'Public Records — Current Issues In Control And Access Prior To Privatisation', (1996) 65 *FoI Review* 58-61.
4. Administrative Review Council, 'The Contracting Out of Government Services', Issues Paper, February 1997.

## Freedom of information reporting requirements: The Tasmanian 'devil' approach — forget and file away

Freedom of Information legislation in several Australian jurisdictions (including Tasmania) requires that public sector agencies adhere to certain *FoI* reporting requirements in their departmental annual reports, and also in a general *FoI* annual report. Indeed, the Australian Law Reform Commission has noted that 'reporting is an important part of monitoring'<sup>1</sup> and have suggested that an *FoI* Commissioner, at the Commonwealth level, should prepare an annual report to Parliament on the operation and administration of the *FoI Act*, including such details as poor *FoI* administration and any regular or persistent failure by agencies to comply with the Act. The ALRC further suggests that the Commissioner's monitoring powers should not be limited to the annual report as a means of drawing attention to poor practices, but that he or she should be able to take appropriate steps to exert pressure on an agency to improve its practices, such as by briefing the relevant Minister.<sup>2</sup>

The evidence is mounting that several jurisdictions struggle to achieve bare minimum reporting standards. Indeed, New South Wales has been painted, by several articles in the *FoI Review*, as a jurisdiction in which *FoI* annual reporting requirements are particularly inadequate. As Bruce Smith has observed over a number of years through his examination of agency annual reports, typically such reports fail to comply with even the most basic of *FoI* statistical reporting requirements.<sup>3</sup>

In light of the ALRC recommendations and the evidence of reporting inadequacies, the NSW Ombudsman in a special report to Parliament titled *Implementing the FoI Act: A Snap-Shot* (July 1997), outlined the procedure and methodology undertaken, and results gained in the commencement of a program to audit compliance by government agencies with the requirements of the *FoI Act*, including compliance with *FoI* reporting requirements. The perceived need for the audit program arose out of long-standing concerns held by the NSW Ombuds-

man's Office about the standard of Fol reporting by agencies; and from the recommendation by the Public Accounts Committee that the Ombudsman carry out audits on Fol annual reporting by agencies.<sup>4</sup> Significantly, the audit revealed 'a very poor level of compliance by public sector agencies with the annual reporting requirements under the Act': with 52% of audited agencies failing to comply with the Fol annual reporting requirements; 13% completely failing to comply; and 39% inadequately complying.<sup>5</sup> Indeed the statistics revealed that only 19% of agencies fully complied with the annual reporting requirements.<sup>6</sup>

Unfortunately the Fol annual reporting practices of Tasmanian agencies appears to follow the same lackadaisical performance of their New South Welsh counterparts. Tasmanian agencies often fail to adequately provide both statistics and information, as required by best practice and in accordance with legislative requirements. Specifically s.56 of the *Freedom of Information Act 1991* (Tas.) requires that the Fol Annual Report include such information as: the number of requests made, the agencies to which these requests pertained; the number of requests refused with the relevant exemption provisions; the number of applications for review made to the Ombudsman, with results of such review; and the total amount of charges collected in respect of applications.

Early signs of a failure in Fol reporting standards were demonstrated by a survey of 1994 annual reports of Tasmanian agencies. The authors undertook the survey in an attempt to ascertain the extent to which Tasmanian agencies reported annual Fol information (see *Table 1* on following page). The review revealed that all agencies listed failed to satisfy even minimum reporting mechanisms as outlined in the *Fol Act*. While these requirements need only be fulfilled by the administering agency for the *Fol Act* (Department of Premier and Cabinet in 1994 and Department of Justice in 1996) these are really bare minimum threshold standards that ought to be satisfied without too much difficulty. While most agencies managed to provide a single figure as to the number of applications that were received by the Department, very few Departments could elaborate beyond this data. Indeed as evidenced by *Table 1*, the majority of Departments failed to provide basic statistical data relating to either internal or external review procedures, processing times or case studies. Furthermore, the Fol Annual Report for the years 1993-94 was not released until late 1995, certainly breaching the 'as soon as practicable to be released at the end of that year' provision of s.56(1) under the Act.

The delayed release of the 1994 Annual Report on Fol compounded the clear deficiencies in individual agency reporting for that period. The Tasmanian Legislative Council Select Committee on Freedom of Information despite having its attention drawn to this delay made no findings on this matter or other reporting deficiencies. In scenes reminiscent of a *Hitchhiker's Guide to the Galaxy* sketch Tasmanians who might have a passing interest in the Fol performance of a government agency (maybe sparked by the parliamentary and media outcry over the proposed 1994 amendments to the *Fol Act* in Tasmania) were told to look at the Annual Report on Fol (not available for another 12 months) for more (if any) details.

### Tasmanian Fol Annual Report: July 1995-June 1996

This fourth annual report pursuant to s.56(1) of the *Fol Act* was released by the Department of Justice in July 1997. Being somewhat thinner than previous annual reports, it provides commentary and statistics for four main Fol areas:

- requests received and decided by agencies,
- reasons for refusal,
- reviews of decisions, and
- fees and charges.

These statistics have been drawn from Tasmanian State and local government departments, as well as statutory authorities.

#### Requests received and decided: State government agencies

Statistics indicate that there was an increase (of 436) in the total number of requests received (if the figure is 2612)<sup>7</sup> compared to the previous year. However, much of this increase was reflected in the Tasmanian police statistics, which received over 76% of total requests. Consistent with previous years, the top 11 State government departments received 21%,<sup>8</sup> with the remaining 3% being shared by 23 other agencies and prescribed authorities. Significantly, apart from the substantial increase in requests to Police Tasmania, the number of requests to other agencies and prescribed authorities either remained constant, or in certain cases, dropped. This would lend credence to the idea that once the figures are adjusted to take into account requests for police prosecution briefs and personal information, there has been little if any real increase in the number of Fol requests received throughout the year for State government departments.

#### Outcome of requests

The types of requests made in Tasmania point to a major difference in the usage of Fol compared to other Australian jurisdictions. There are two important reasons for this difference. First, the anomaly that 76% of Tasmanian Fol requests are to Police Tasmania. This anomaly first arose as a result of the Tasmanian Ombudsman decision to endorse the Victorian Supreme Court decision in *Sobh v Police Force of Victoria* [1994] 1 VR 41.<sup>9</sup> However, it has continued despite the Tasmanian Legislative Council Select Committee on Freedom of Information recommending similar changes to Tasmanian practice as brought about by the amendments to the *Magistrates Court Act 1989* (Vic.) which were made shortly after the decision in *Sobh*.

The second major difference is that unlike other jurisdictions, only 7% of Tasmanian Fol applications are for personal affairs information. This can be contrasted to the general range in Australia from a low 57% in Victoria to a high 86% in South Australia. An explanation for this difference may be the general policy of key Tasmanian agencies (such as Community Services) to allow access outside the formal requirements of the Act. Another possibility is that the low key awareness campaign of the Fol Unit and the Government has left Tasmanians largely unaware of the availability of Fol to access personal affairs information.

The Report states that of the 2208 decided requests that involved access to information, access was granted in full or in part for 97% of applicants (47% full disclosure

Table 1: Agency Reporting of FoI Information in Tasmania for the Year Ended 30 June 1994

	Police	Education	HEC	Transport	Primary Industry	Justice	Resources	Premier	Employment	Tourism
In/out details	Yes	Yes	No	Yes	Yes	No	Yes	No	No	Yes
Blurb on FoI	No	No	No	Yes	No	No	Yes	Yes	Yes	No
Internal review results	No	No	No	Yes	No	No	No	No	No	No
External review results	No	No	No	Yes	No	No	No	No	No	No
Processing times	No	No	No	No	No	No	No	No	No	No
Case studies	No	No	No	No	No	No	No	No	No	No
Other	includes list of information that is available outside of FoI.	refers to DPAC FoI report for additional information.		gives brief list as to category of documents held; lists charges and appeal procedures.		one sentence states that the administration of FoI functions has increased during the year and led to increased pressures on the Branch's resources.	refers to DPAC FoI report for additional information.	refers to DPAC FoI report for more detailed statistics.	specifies types of information held by the Department.	provides information as to why requests were denied.

Table 2: Agency Reporting of FoI Information for the year ended 30 June 1996

	Police	DCHS	Transport	DPI & F	Justice
In/out details	Yes	Yes	Yes	No	Yes
Blurb on FoI	Yes	No	No	No	No
Internal review results	Yes	Yes	Yes	No	No
External review results	Yes	Yes	Yes	No	No
Processing times	Yes	No	Yes	No	No
Case studies	No	No	No	No	No
Other			quite detailed statistics; includes user information, waiving reasons and exemptions claimed.	one sentence only states that FoI enquiries were dealt with in accordance with the Act.	only statistics relating to number of requests and whether access was granted.