

The Auditor-General
Audit Report No.57 2003-04
Business Support Process Audit

Administration of Freedom of Information Requests

Australian National Audit Office

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of Australia 2004

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Canberra ACT
24 June 2004

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a business support process audit across agencies in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *Administration of Freedom of Information Requests*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. J. Barrett'.

P. J. Barrett
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Contents

Abbreviations/ Glossary.....	7
Summary and Recommendations	11
Summary	13
Background	13
The audit.....	14
Audit conclusion	14
Recommendations.....	16
Agencies' responses to the recommendations	17
Audit Findings and Conclusions	19
1. Introduction.....	21
Background to the audit	21
Audit objectives, scope and criteria.....	22
Audited agencies.....	24
Previous reviews of the <i>Freedom of Information Act 1982</i>	25
2. The Administration of FOI in the Australian Government	28
Introduction.....	28
Audit findings.....	28
Responsibility for FOI administration	34
The impact of the operational environment on the FOI Act	41
Conclusion.....	42
3. Control Environment.....	43
Introduction.....	43
Audit criteria	43
Audit findings.....	44
Conclusion.....	50
4. Control Activities—Processing of Requests.....	52
Introduction.....	52
Audit criteria	52
Audit findings.....	53
Conclusion.....	66
5. Information and Communication	68
Introduction.....	68
Audit criteria	68
Audit findings.....	68
Conclusion.....	71
6. Monitoring and Review.....	72
Introduction.....	72
Audit criteria	72
Audit findings.....	72
Conclusion.....	74

Appendices	75
Appendix 1: Agency FOI Obligations	77
Appendix 2: FOI Risk Assessment.....	79
Appendix 3: Personal Information	82
Appendix 4: Agency comments.....	86
Index	88
Series Titles.....	89
Better Practice Guides.....	93

Abbreviations/ Glossary

Agency	The FOI Act describes agency as a Department, a prescribed authority or eligible case manager.
ANAO	Australian National Audit Office
Centralised	The term centralised is used throughout the report to reflect either centralised or regionalised decision-making in relation to FOI access decisions. In these instances, a dedicated FOI resource makes access decisions.
Charges	Processing charges are provided for by section 29 of the FOI Act, the FOI regulations detail what processes agencies can impose a charge for and how that charge is to be calculated.
Control activities	<p>Control activities are the specific practices, processes and methodologies that help an entity:</p> <ul style="list-style-type: none">• reduce risks while opportunities of improvement are identified;• prevent or detect irregularities;• safeguard assets; and• maintain complete financial records and other relevant databases that accurately reflect the FOI activities of an entity.
Control environment	The control environment is the organisational context that reflects management’s commitment and attitude to the implementation and maintenance of an effective control structure.
Control structure	<p>A control structure provides an important linkage between strategic objectives and tasks and functions undertaken to achieve those objectives. The control structure is made up of the following five interrelated components:</p> <ul style="list-style-type: none">• control environment;• risk assessment;• control activities;• information and communication; and• monitoring and review.

Decentralised	The term decentralised is used throughout the report to reflect decentralised decision-making in relation to FOI access decisions. In these instances, the operational areas make decisions.
Fees	Application fees apply to FOI requests (\$30) and requests for internal review (\$40).
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1982</i>
FOI Annual Report	Section 93 of the FOI Act requires the Attorney-General to prepare a report on the operation of the FOI Act each year. This report must be tabled in both Houses of the Parliament.
Information and communication	Effective information and communication arrangements are fundamental for an entity so that it achieves its strategic and business objectives by providing a solid foundation for informed decision-making and performance reporting.
Monitoring and review	Monitoring and review is a key element of an entity's continuous improvement process that helps guarantee that the entity implements effective processes and tools to monitor and review relevant data.
Ombudsman	The Commonwealth Ombudsman
Personal information	Personal information is defined by the Privacy Act as being information or an opinion, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

Prescribed
authority

The FOI Act defines a prescribed authority as being:

(a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment or an Order-in-Council, other than:

- (i) an incorporated company or association;
- (ii) a body that, under subsection (2), is not to be taken to be a prescribed authority for the purposes of this Act;
- (iii) the Australian Capital Territory House of Assembly;
- (iv) the Legislative Assembly of the Northern Territory or the Executive Council of the Northern Territory;
- (v) the Legislative Assembly of the Territory of Norfolk Island; or
- (vi) a Royal Commission;

(b) any other body, whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of this Act, being:

- (i) a body established by the Governor-General or by a Minister; or
- (ii) an incorporated company or association over which the Commonwealth is in a position to exercise control;

(c) subject to subsection (3), the person holding, or performing the duties of, an office established by an enactment or an Order-in-Council; or

(d) the person holding, or performing the duties of, an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purposes of this Act, being an appointment made by the Governor-General, or by a Minister, otherwise than under an enactment or an Order-in-Council.

Privacy Act *Privacy Act 1988*

Risk assessment Assessing risk is a major component of an effective control structure. It involves the identification, analysis, assessment and prioritisation of risks that need to be treated by control activities

Summary and Recommendations

Summary

Background

1. The *Freedom of Information Act 1982* (the FOI Act) came into effect on 1 December 1982. The FOI Act applies to Australian Government agencies and entities. The FOI Act extends a right to every person to access information in the possession of the Australian Government.

2. The FOI Act creates a general right of access to information that does not require a person to establish a special interest or 'need to know' before he or she is entitled to seek to have access granted. It also details the circumstances under which access to information can be denied. The FOI Act is not intended to prevent or discourage giving access to information that can be lawfully provided outside the provisions of the FOI Act.

3. The FOI Act also provides specific direction on a variety of issues, including:

- decision-making authority;
- classes of documents which are exempt from release;
- procedures for making an FOI request;
- applicants' rights of review;
- application fees and processing charges; and
- third and related party consultation.

4. The FOI Act provides for access to information held by the agency. An agency is, generally, not required:

- to make available information which is not in its possession in a documentary form; or
- to collate information from a number of documents in its possession and create a new document.

5. While each agency is responsible for meeting its own obligations under the FOI Act, the Attorney-General's Department, on behalf of the Attorney-General, is responsible for the general administration of the FOI Act.¹

¹ Attorney-General's Department, *Freedom of Information Act 1982 Annual Report 2002–03*, paragraph 4.2.

The audit

Audit objectives

6. The audit objectives were to:
 - assess the appropriateness of agencies' policies and processes for dealing with requests for information in accordance with the FOI Act; and
 - assess agencies' compliance with the provisions of the FOI Act, in relation to selected requests for information.

Audit scope and focus

7. The audit focus was restricted to the administrative processes used by agencies to support the processing of FOI requests and to meet the other requirements of the FOI Act.

8. The ANAO did not attempt to form a view on whether the decision to release, or not to release, information was correct or appropriate. The FOI Act provides for the Administrative Appeals Tribunal to review decisions made by agencies and for the Commonwealth Ombudsman to investigate complaints about how agencies have handled FOI requests.

The agencies included in this audit

9. The audit was undertaken in six agencies, as follows:
 - Australian Customs Service;
 - Australian Federal Police;
 - Civil Aviation Safety Authority;
 - Department of Communications, Information Technology and the Arts;
 - Department of Veterans' Affairs; and
 - Attorney-General's Department.

Audit conclusion

10. The ANAO concluded that, to varying degrees, the audited agencies had in place appropriate policies and processes to support the processing of FOI requests and other obligations of the FOI Act. Further, staff with direct FOI processing responsibilities largely had a sound understanding of the requirements of the FOI Act and its intent.

11. While general performance information about FOI activity in the Australian Government is provided in an FOI report, prepared annually by the

Attorney-General's Department, the value of the information is limited because:

- not all agencies required to report can be readily identified; and
- there is no Australian Government agency responsible for monitoring compliance with the FOI Act, or identifying opportunities for improvement from the information reported.

12. The ANAO found that the Attorney-General's Department and the Australian Government Solicitor had effective mechanisms in place to provide practical information to FOI practitioners about significant issues that may impact on the FOI process.

13. The ANAO concluded that all audited agencies had considered issues relevant to the administration of FOI as part of their risk management planning. However, not all the risks and treatments identified were as comprehensive as they could have been as part of a sound cultural-wide risk management approach.

14. All of the audited agencies had developed processes and procedures that reflected the requirements of the FOI Act, although the degree to which these processes and procedures were documented varied across agencies.

15. In each of the audited agencies, staff with specific FOI coordination responsibilities had a sound knowledge of the FOI Act. However, general understanding by other staff of the FOI Act was often more limited.

16. 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.

17. In most instances, valid requests for information were acknowledged within the 14 day statutory period. The time taken by agencies to advise applicants that their requests were invalid, and the action the applicant was required to take before the agency could process the request, varied from being almost immediate to taking several weeks.

18. The ANAO found that, in the majority of valid requests reviewed, agencies had advised applicants of the access decisions within the 30 day statutory period.

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

20. All of the audited agencies had processes in place that enabled them to meet the reporting requirements in the FOI Act, as well as for internal management reporting requirements.

Recommendations

Recommendations three, four, five, eight and nine below are based on the findings from the agencies reviewed but are likely to have relevance to other Commonwealth organisations. Recommendations one, two, six and seven are directed at the Attorney-General's Department.

Recommendation No.1
Para 2.29

The ANAO recommends that the Attorney-General's Department 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.

Recommendation No.2
Para 2.34

The ANAO recommends that the Attorney-General's Department update the information captured by quarterly returns to enable a distinction to be drawn between requests finalised between 31 and 60 days, due to an extension in the statutory period, and those being finalised outside the statutory period.

Recommendation No.3
Para 3.15

The ANAO recommends that agencies develop an agency specific policy document which articulates the agency's approach to FOI issues, and related roles and responsibilities, and which is readily available to all staff.

Recommendation No.4
Para 3.32

The ANAO recommends that all agencies review existing practices to make provision for searches of both paper and electronic records, prior to access decisions being made.

Recommendation No.5
Para 4.10

The ANAO recommends that, consistent with the requirements for valid requests, agencies implement an internal benchmark of 14 days for responding to invalid FOI requests and advising applicants on how to make FOI requests valid.

- Recommendation No.6
Para 4.32** The ANAO recommends that the Attorney-General's Department update guidance material to provide a framework, that delegates might use when considering the issue of waiving/remitting application fees, and imposing processing charges.
- Recommendation No.7
Para 4.52** The ANAO recommends that the Attorney-General's Department amend the relevant FOI Memoranda to state clearly that better practice would be for agencies to provide applicants with details of their rights of review for all primary decisions. This requirement could also be considered and recommended when amendments are next being made to the FOI Act.
- Recommendation No.8
Para 4.73** The ANAO recommends that agencies implement a process for: the review of Section 9 Statement details, which lists documents used by the agency in making decisions that affect the public, at least annually; and the provision of revised statements to National Archives of Australia in a timely manner.
- Recommendation No.9
Para 5.13** The ANAO recommends that agencies instruct both primary and internal review delegates on their responsibilities under the FOI Act and the decision-making process within their agency, prior to their appointment.

Agencies' responses to the recommendations

21. The majority of audited agencies either agreed, or agreed in principle, with all the recommendations. The Department of Veterans' Affairs disagreed with recommendation five, and the Department of Communications, Information Technology and the Arts considered that, in relation to recommendation nine, its training arrangements were appropriate and cost-effective given the small number of FOI requests received and its devolved decision-making arrangements.

22. Agencies' responses to the recommendations are provided following each recommendation in the main body of the report. General comments provided by the audited agencies have been included at Appendix 4.

Audit Findings and Conclusions

1. Introduction

This chapter provides an overview of the audit and explains the scope of audit review as well as providing a short overview of past reviews of the Freedom of Information Act 1982.

Background to the audit

1.1 The *Freedom of Information Act 1982* (the FOI Act) came into effect on 1 December 1982. The FOI Act extends a right to every person to access information in the possession of the Australian Government by requiring Australian Government agencies to publish information about their operations and powers affecting members of the public, as well as their manuals and other documents used in making decisions affecting the public. The FOI Act also requires agencies to provide access to documents in their possession unless the document falls within an exemption or exception specified in the legislation.²

1.2 The FOI Act:³

- creates a general right of access that does not require a person to establish a special interest or ‘need to know’ before he or she is entitled to seek to have access granted;
- sets out the circumstances in which access can be denied as a matter of discretion;
- does not prevent or discourage the giving of access that can lawfully be given other than under the FOI Act;
- is intended to be a minimum rather than maximum standard; and
- applies to most Australian Government agencies and entities.^{4 5}

1.3 The FOI Act also provides specific direction on a variety of issues, including:

- decision-making authority;

² Available: <<http://www.ag.gov/www/securitylawHome.nfs/AllDoc>>.

³ The FOI Act details obligations for the provision of information but does not detail the methodologies that agencies should apply to meet those obligations.

⁴ Available: <<http://www.ag.gov/www/securitylawHome.nfs/AllDocs>>.

⁵ The FOI Act applies to most Commonwealth agencies and entities. Parliament, Parliamentary Departments and some authorities are exempt either in full or in part in respect of defined areas of their operations—these exemptions are outlined in Schedule 2 of the FOI Act.

- classes of documents which are exempt from release;
- circumstances in which access to information may be refused;
- procedures for making an FOI request;
- applicants' rights of review;
- application fees and processing charges; and
- third and related party consultation.⁶

1.4 The FOI Act provides for access to information held by an agency. However, an agency is, generally, not required:

- to make available information which is not in its possession in a documentary form; or
- to collate information from a number of documents in its possession and create a new document.

1.5 While each agency is responsible for meeting its own obligations under the FOI Act, the Attorney-General's Department is responsible for the general administration of the FOI Act.⁷ The Department also collates information on FOI activity across the Australian Government for inclusion in the FOI Annual Report, which it tables in Parliament each year. In addition, each agency is required to provide, in its own annual report, information required by subsection 8(1) of the FOI Act.⁸

Audit objectives, scope and criteria

Audit objectives

1.6 The audit objectives were to:

- assess the appropriateness of agencies' policies and processes for dealing with requests for information in accordance with the FOI Act; and
- assess agencies' compliance with the provisions of the FOI Act, in relation to selected requests for information.

⁶ Available: <<http://www.ag.gov/www/securitylawHome.nfs/AllDoc>>.

⁷ Attorney General's Department, loc. cit.

⁸ The detail of this requirement is discussed in Chapter 4.

Audit scope and focus

1.7 The audit focus was restricted to the administrative processes used by agencies to support the processing of FOI requests, and to meet the other requirements of the FOI Act.

1.8 The ANAO did not attempt to form a view on whether the decision to release, or not to release, information was correct or appropriate. The FOI Act provides for the Administrative Appeals Tribunal to review decisions made by agencies and for the Commonwealth Ombudsman to investigate complaints about how agencies have handled FOI requests.

Audit criteria

1.9 The administration of FOI requests has been assessed against the standard elements of the internal control structure⁹ in a way that is appropriate to the administration of FOI requests and other obligations imposed by the FOI Act. The five standard elements of the control structure are:

- control environment;
- risk assessment;¹⁰
- control activities;
- information and communication; and
- monitoring and review.

1.10 These elements are described further as follows:

The control environment is the foundation for the effectiveness of all the other components. It reflects management's commitment and attitude to establishing an effective control structure. It is sometimes referred to as the 'tone at the top' and is dependent on firm leadership and clarity of direction from the governing body.

Risk assessment and control activities include the identification, analysis and assessment of risks to achieving objectives and the design of control policies and procedures to manage those risks, focusing on those that have potential for more significant exposures and are critical to business.

Regular and relevant information needs to be collected and communicated to enable performance to be monitored and reviewed. The effectiveness of the control structure also requires on-going monitoring and review.¹¹

⁹ Australian National Audit Office, *Better Practice Guide to Effective Control, Control Structures in the Commonwealth Public Sector: Controlling Performance Outcomes*, 1997.

¹⁰ Risk assessment has been addressed as part of the control environment for reporting purposes.

¹¹ Australian National Audit Office, *op. cit.*, p. 6.

Table 1.1

Audit criteria

Control Environment
The agency has undertaken an effective assessment of the risk in relation to the administration of freedom of information requests. The agency fosters an overall environment conducive to good FOI administration.
Control Activities
The agency has developed and applied systems and procedures for the administration of FOI processes, which are consistent with the requirements of the FOI Act.
Information and Communication
The agency communicates effectively both organisational and individual obligations under the FOI Act to staff, and clearly articulates resultant administrative arrangements to meet these obligations to staff.
Monitoring and review
The agency effectively monitors and reviews all aspects of the administration of freedom of information requests and other obligations under the FOI Act.

Audited agencies

1.11 The audit was undertaken in six agencies. Each agency had a different profile in relation to the number and types of requests received, as well as different mechanisms for processing FOI requests. The six agencies audited were:

- Australian Customs Service;
- Australian Federal Police;
- Civil Aviation Safety Authority;
- Department of Communications, Information Technology and the Arts;
- Department of Veterans’ Affairs; and
- Attorney-General’s Department.

1.12 The Attorney-General’s Department is responsible for the administration of the FOI Act and, as such, was audited from two perspectives. Firstly, as with other agencies in the audit, the audit formed an opinion on the Department’s general administration of FOI requests and other general obligations under the FOI Act. Secondly, the ANAO examined the specific policy and administrative responsibilities of the Department for the FOI Act.

1.13 Table 1.2 provides the number of FOI requests received in 2002–2003 for all the audited agencies.

Table 1.2

Number of FOI requests received by audited agencies in 2002–2003

Agency	Number of FOI Requests Received in 2002–03
Australian Customs Service	41
Australian Federal Police	119
Civil Aviation Safety Authority	53
Department of Communications, Information Technology and the Arts	7
Department of Veterans' Affairs	12 729
Attorney-General's Department	74

Source: Australian Customs Service, Civil Aviation Safety Authority and Department of Veterans' Affairs figures were sourced from agency Annual Reports 2002–2003. Australian Federal Police, Department of Communications, Information Technology and the Arts and Attorney-General's Department figures were sourced from the *Freedom of Information Act 1982 Annual Report 2002–2003*, Appendix A.

Audit approach

1.14 The audit methodology involved interviews with selected officers, and the examination of agency policy, processes and documentation supporting the administration of FOI requests and other requirements under the FOI Act.

1.15 The ANAO provided each agency reviewed with a management report on the audit findings, which included a number of detailed and specific recommendations relevant to the particular agency.

1.16 The audit was undertaken in accordance with ANAO Auditing Standards at an approximate cost of \$306 000.

Previous reviews of the *Freedom of Information Act 1982*

1.17 In December 1995, the Australian Law Reform Commission (ALRC) and Administrative Review Council (ARC) completed a joint report *Open Government; a review of the federal Freedom of Information Act 1982*. This review focussed on the operation of the legislation and considered whether any amendment to the legislation was necessary.

1.18 The main recommendations of the report were designed to give full effect of the Australian people's right of access to government held information including:

- the retention of the FOI Act as an instrument of public sector accountability;

- creation of a new statutory office of FOI Commissioner to monitor and improve the administration of the FOI Act and to provide assistance, advice and education to applicants and agencies about how to use, interpret and administer the FOI Act;
- revision of the object clause to promote a pro-disclosure interpretation of the FOI Act and to acknowledge the important role of freedom of information in Australia's constitutionally guaranteed representative democracy;
- a review of all secrecy provisions in federal legislation to ensure that they do not impose prohibitions on the disclosure of government-held information that are broader than the exemption provisions of the FOI Act;
- several amendments to the FOI and Privacy Acts to ensure the continued smooth operation of the overlap between the two Acts in respect of access to, and amendment of, personnel information and to clarify the interaction between the two Acts in respect of the disclosure of third party personal information;
- the retention of the Administrative Appeals Tribunal as the determinative reviewer of FOI decisions; and
- not applying the FOI Act to the private sector or to government business enterprises that are engaged predominantly in commercial activities in a competitive market.¹²

1.19 The ANAO notes that, while there is no formal requirement for it to do so, the Government has not responded to the ALRC/ARC Report.

1.20 In June 1999, the Ombudsman's Office published *Needs to know—an own motion investigation into the Administration of the Freedom of Information Act 1982 in Commonwealth Agencies (Needs to know)*. This report identified widespread problems with recording FOI decisions, and the probable misuse of exemptions to the disclosure of information under the legislation. The report also identified problems with other aspects of FOI administration including:

- disclosure of personal information;
- authorisations;
- FOI training;
- records management; and
- completion of public notices relating to the functions and decision-making powers of the agency.

¹² Australian Law Reform Commission, *Open Government: a review of the federal Freedom of Information Act 1982*, 1995.

1.21 Other reviews of the FOI Act and state based FOI legislation which helped inform this audit include:

- Senate Legal and Constitutional Legislation Committee, Consideration of legislation referred to the Committee—*Inquiry into the Freedom of Information Amendment Bill (Open Government) Bill 2002*, April 2001;
- Australian Capital Territory Auditor-General Report—*The Freedom of Information Act*, - Report No.12 2001;
- Committee on the Office of the Ombudsman and the Police Integrity Commission (NSW)—*First report on the inquiry into access to information*, December 2002; and
- New South Wales Auditor-General Report—*Performance Audit, Freedom of Information*, August 2003.

1.22 The ANAO had not previously undertaken an audit of agencies' administration of FOI requests.

2. The Administration of FOI in the Australian Government

This chapter provides a short overview of the administration of freedom of information in the Australian Government. This chapter also discusses broader processing issues in relation to the operation of the FOI Act, and the role of the Attorney-General's Department in administering the FOI Act.

Introduction

2.1 The Attorney-General's Department is responsible for the general administration of the FOI Act.¹³ In accordance with this responsibility, the Department:

- administers a website that contains guidance material on the administration of FOI requests and related obligations;
- administers an email discussion list (FOIAPPS), which enables subscribers to ask and seek answers to FOI questions, and for the Attorney-General's Department to broadcast FOI policy information to agencies; and
- collates statistical information, provided by agencies, for inclusion in an FOI report (FOI Annual Report) that is tabled in the Parliament annually.

Agencies required to comply with the FOI Act

2.2 The Act provides a broad definition of an agency required to comply with the requirements of the FOI Act. The 2002–03 FOI Annual Report identified 259 bodies that are prescribed for the purpose of the FOI Act.¹⁴

Audit findings

Number and type of FOI requests

2.3 Since the introduction of the FOI Act in December 1982, the Australian Government has received over 640 000 FOI requests. Except for the early years of its introduction and six years in the late 1980s to the early 1990s, the

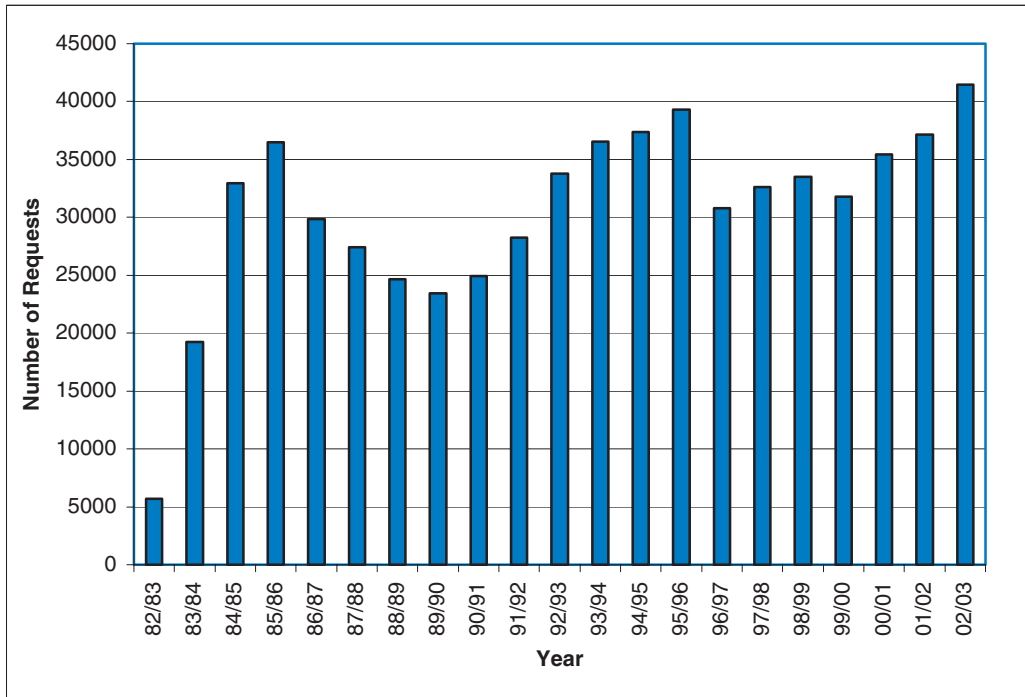
¹³ Attorney General's Department, loc. cit.

¹⁴ The issue of the population of agencies subject to the FOI Act is discussed in more detail later in the chapter.

Australian Government has received over 30 000 requests a year. The number of requests peaked in 2002–03 to over 40 000 (see Figure 2.1).

Figure 2.1

Number FOI of requests received by the Australian Government

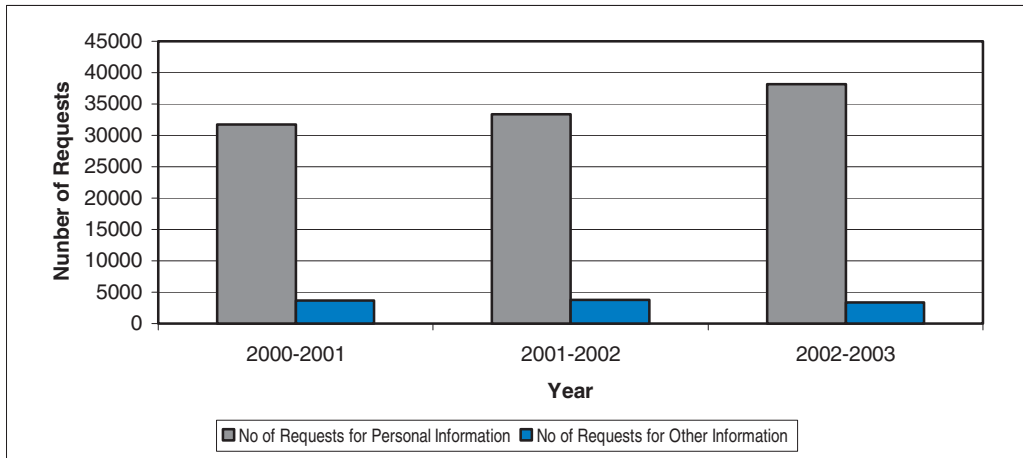


Source: ANAO analysis of all FOI Annual Reports

2.4 Since 2001, the Attorney-General’s Department has required agencies, as part of the FOI reporting process, to indicate the type of request received. As well, in response to a recommendation in the Ombudsman’s Report *Needs to Know*, agencies have been required to categorise requests into requests for ‘personal information’ or requests for ‘other information’. As can be seen in Figure 2.2 the vast majority of requests received by agencies are for personal information.

Figure 2.2

Types of requests—all agencies

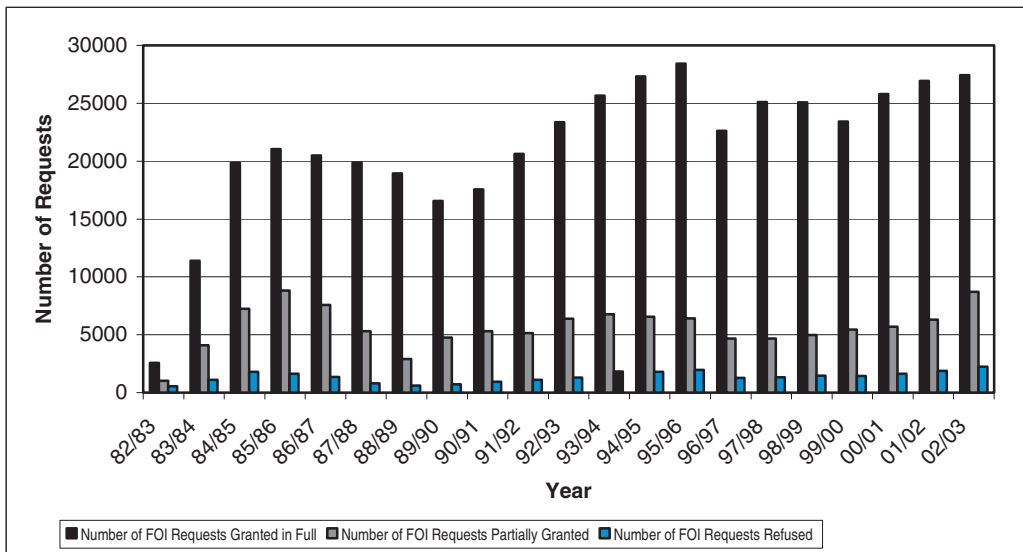


Source: ANAO analysis of FOI Annual Reports since 2000-01

2.5 The FOI Act also requires agencies to report whether the information requested has been granted in full, partially released, or refused. As can be seen in Figure 2.3, access in full to the information requested has been provided in response to the majority of requests.

Figure 2.3

Determination of requests—all agencies



Source: ANAO analysis of all FOI Annual Reports

2.6 Table 2.1 shows the number of requests in all agencies granted in full, partially released or refused during 2002–2003, categorised into personal information and other information. Applicants seeking personal information were granted access in full on 74 per cent of occasions, whereas those applicants seeking other information were only granted access in full on 46 per cent of occasions.

Table 2.1

FOI Access requests determined 2002–2003—all agencies

DECISION	Personal Information	Personal Information %	Other Information	Other Information %	Total	Total %
Granted in Full	25 958	73.7	1 460	46.3	27 418	71.5
Granted in Part	7 475	21.2	1 231	39.1	8 706	22.7
Refused	1 786	5.1	460	14.6	2 246	5.9
TOTAL	35 219	100	3 151	100	38 370¹⁵	100

Source: ANAO analysis of 2002–03 FOI Annual Report

2.7 In the agencies subject to audit, the ANAO focused on the FOI requests received in 2002–03. Although, in aggregate, Australian Government agencies received more requests for personal information than for other information, (see Figure 2.2), the ANAO found that a greater percentage of requests received by five of the six audited agencies was for other information.

2.8 The ANAO also found that, in the five agencies where the information requests were predominantly for other information, the information was more likely to be partially released or refused, than fully released.

Agency response times

2.9 The FOI Act also requires agencies to make an access decision in relation to valid requests¹⁶ for information within 30 days.¹⁷ Figure 2.4 shows that the majority of requests received by all agencies are determined within the 30 day period.

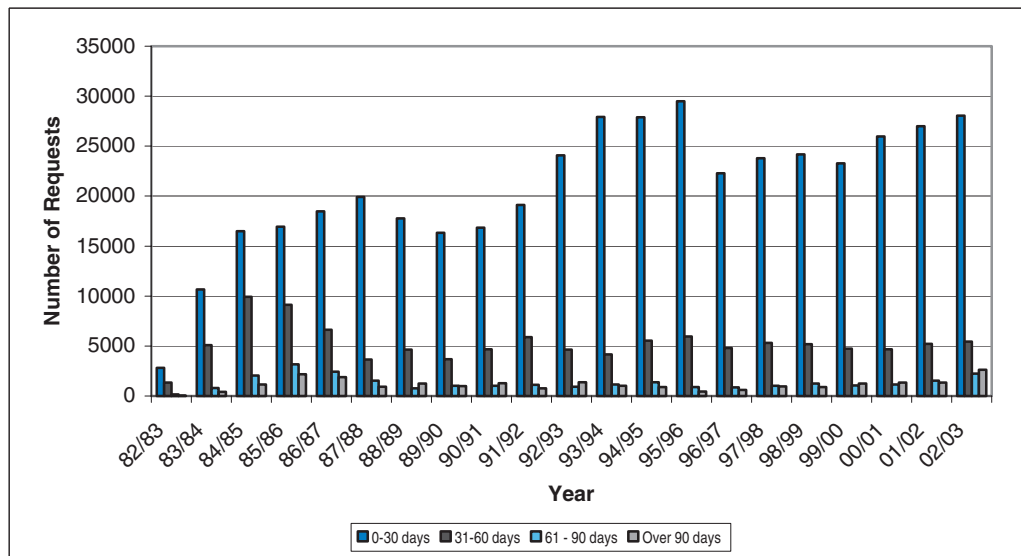
¹⁵ Not all requests received in a year are determined in the same year. Hence, the number of requests received in 2002–2003 will differ from the number determined.

¹⁶ As discussed later, a valid request is described in Section 15 of the FOI Act and must meet criteria for the specific identification of the information sought and be accompanied by an application fee.

¹⁷ In some instances, this timeframe can be extended to 60 days to allow for consultation with third parties.

Figure 2.4

Agency response times—all agencies



Source: ANAO analysis of all FOI Annual Reports

2.10 Table 2.2 shows that there is some difference in the percentage of requests for ‘personal information’ responded to within 30 days (74 per cent) and percentage of requests for ‘other information’ responded to within 30 days (65 per cent).¹⁸

¹⁸ As discussed later, requests reported as being finalised within 31-60 days may be subject to a statutory extension of time as provided for in sub-section 15(6) of the FOI Act. Section 31 of the FOI Act provides for the processing ‘time clock’ to be stopped in particular circumstances such as the period between advising the applicant of the estimate of processing charges and receipt of payment from the applicant.

Table 2.2**Response time for Other Information compared against all requests 2002–2003 all agencies**

Response Time	Personal Information	Personal Information %	Other Information	Other Information %	Total	Total %
0-30 Days	26 001	73.83	2 058	65.31	28 059	73.13
31-60 Days*	4 888	13.88	554	17.58	5 442	14.18
61-90 Days	2 018	5.73	230	7.30	2 248	5.86
Over 90 Days	2 312	6.56	309	9.81	2 621	6.83
Total	35 219	100	3 151	100	38 370	100

Source: ANAO analysis of 2002–03 FOI Annual Report

Note: * Requests reported as being finalised within 31-60 days may be subject to a statutory extension of time as provided for in sub-section 15(6) of the FOI Act.

2.11 The majority of requests received by each of the audited agencies during 2002–03 were finalised within 30 days (see Table 2.3).¹⁹

Table 2.3**Audited agencies' response times for all requests 2002–03²⁰**

Response Time	Agency 1 %	Agency 2 %	Agency 3 %	Agency 4 %	Agency 5 %	Agency 6 %
0-30 Days	96	63	55	93	68	51
Over 30 Days	4	27	45	7	32	49

Source: ANAO analysis of 2002–03 FOI Annual Report

Fees and charges

2.12 The FOI Act provides for agencies to charge an application fee at the time a request for information, or a review of a decision, is made, and to impose a charge for processing the request.²¹ While it is Government policy

¹⁹ As discussed later, requests reported as being finalised within 31–60 days may be subject to a statutory extension of time as provided for in sub-section 15(6) of the FOI Act.

²⁰ The order of the agencies in this chart bears no correlation to the order of agencies in Table 1.2.

²¹ The issue of fees and charges is discussed in more detail in Chapter 4.

that charges will be imposed for all FOI requests, the FOI Act provides a general discretion for agencies to remit application fees and not to impose charges.

2.13 Table 2.4 shows the total amount of application fees and processing charges²² collected by all agencies in 2002–2003.

Table 2.4

Total of fees and charges collected 2002–2003

No of Requests	Total Fees Collected (\$)	Charges Collected (\$)	Total Fees and Charges Collected (\$)	Average Collected/Requested (\$)
41,481	109 685	150 636	260 321	6.28

Source: 2002–03 FOI Annual Report

2.14 The 2002–03 FOI Annual Report showed that agencies provided estimates of charges to applicants totalling \$928 124, but exercising their discretion under the FOI Act collected only \$150 636 (16 per cent) of those charges.

2.15 The ANAO did not examine the reasons for the difference in the estimate of charges compared to the amount collected. However, from its audit of selected agencies, the ANAO found that the majority of this difference is a result of applicants either refining the request, which reduces the cost of processing, or withdrawing their request after agencies have issued an estimate of charges notice.

2.16 In addition, the ANAO found that where an applicant requested access to personal information, agencies generally had adopted the practice of waiving processing charges.

Responsibility for FOI administration

2.17 Each agency is responsible for meeting its own obligations under the FOI Act and the Attorney-General’s Department is responsible for the general administration of the FOI Act. While no agency has a legislative responsibility for the ongoing day-to-day monitoring of agencies performance in the administration of the FOI Act, section 93 of the FOI Act requires the Attorney-General to report annually on the operation of the FOI Act. Section 93(3) requires the annual report to include information on:

²² For the purpose of the FOI Act, fees relate to application fees required by the FOI Act for agencies to process requests—this is a flat fee, while charges relate to charges that are imposed specifically to support the processing of a request and are calculated on individual requests.

- the particulars of the operations of each agency and Minister under the FOI Act during the year;
- identification of the guidelines by the Attorney-General's Department, in relation to the manner in which agencies should comply with their obligations under the FOI Act; and
- the description of any effort by the Attorney-General's Department to assist agencies to comply with their obligations under the FOI Act.

FOI Annual Report

Collation of the FOI Annual Report

2.18 The FOI Act requires agencies to provide the Attorney-General's Department with statistical data for inclusion in the FOI Annual Report²³ to inform the Parliament on the operation of the FOI Act. Agencies are required to prepare quarterly statistical returns and an annual return.

2.19 The quarterly returns contain information on the number of FOI requests received, the access decisions made and any review requested by applicants. In addition, agencies are required to complete an annual return that contains data on the resources used by Australian Government agencies to respond to requests for information under the FOI Act.

2.20 To support the collation of the data for the FOI annual report, the Attorney-General's Department previously relied on paper-based submissions from agencies. The Attorney-General's Department has developed an Internet hosted system to collect FOI statistics from Australian Government agencies. This system has been operational since August 1999 and contains automated checks to confirm that data entered in quarterly returns of agencies does not contradict previously provided information.

Effectiveness of the FOI Annual Report

2.21 The ANAO considers that to be useful for decision-making on the administration of the FOI Act, the information in the report needs to be complete and accurate. In addition, the information in the FOI Annual Report needs to be periodically reviewed by a body, such as the Attorney-General's Department, so that opportunities for improvement can be identified.

Completeness of information

2.22 Part of the assurance work done by the Attorney-General's Department on the completeness of information provided by agencies includes an annual

²³ Subsection 93(3) of the FOI Act requires that this report include particular information including the number of requests made, the number of decisions granting, partially granting or refusing access, and fees and charges collected.

stock-take to make certain that all agencies required to report in accordance with the FOI Act are indeed doing so. The stock-take involves a letter, which is sent to the FOI Coordinator in each Portfolio Department, attaching details from the previous year's annual report. The letter seeks confirmation that the list of agencies in the portfolio is complete, up-to-date and reflects the correct name for each agency.

2.23 In coming to a conclusion on the completeness of information provided by agencies for the FOI Annual Report, the ANAO noted that some agencies were not included in the Report, even though they appeared to meet the definition of an agency provided in the FOI Act. It was unclear to the ANAO whether this was because the agency had not provided the information or because the agency's information had been included with the information provided by the Portfolio Department. As a result, the ANAO was unable to gain assurance that the FOI Annual Report contained the required information from all agencies.

2.24 The FOI Annual Report contains the following disclaimer:

This list is based on information provided by agencies. It may contain omissions or inaccuracies and should not be relied on as an authoritative list.²⁴

2.25 Despite this disclaimer, the ANAO considers users of the FOI Annual Report have an expectation that it includes information on all agencies that have reporting obligations under the FOI Act. The ANAO considers that it would be more appropriate for the annual stock-take letter to be addressed to Chief Executive Officers of portfolio departments rather than FOI Coordinators, who generally do not have a coordination role across the portfolio. The Attorney-General's Department advised that, for its current stock-take of agencies and Ministers subject to the FOI Act, the Department has written to Secretaries of Portfolio Departments, rather than to FOI Coordinators.

Review of information provided in the FOI Annual Report

2.26 The FOI Annual Report includes information on those agencies that have not complied with the 30 day statutory decision-making timeframe provided for in the FOI Act. In examining compliance with the FOI Act over time, the ANAO noted that there were some agencies that regularly failed to meet the required statutory timeframes. The following examples over the last five years are indicative:

- Sixteen agencies were identified as having notified 10 or more access decisions between 31 and 60 days after receiving valid requests.

²⁴ Attorney-General's Department, op.cit., Appendix M—Agencies and Ministers subject to the FOI Act.

Thirteen of these agencies were included in this category more than once.

- Twelve agencies were identified as having notified 10 or more access decisions between 61 and 90 days after receiving a valid request. Nine of these agencies were included in this category more than once.
- Fifty-eight agencies have been identified as notifying access decisions more than 90 days after receiving a valid request. Thirty-five of these agencies were included in this category more than once.

2.27 Given the above observations, the ANAO considers that there is a need for the Attorney-General's Department, to implement a formal monitoring process that focuses on the requirements of the FOI Act and the processes used by agencies to support FOI administration.

2.28 The Attorney-General's Department advised it considers that, for any monitoring to be effective, it should be undertaken by an agency/body that has the express powers to do so. While the ANAO acknowledges the limitations to the Attorney-General's Department authority, it considers, that in the absence of a monitoring body, it would be appropriate for the Department to remind agencies' Chief Executive Officers of their statutory obligations under the FOI Act, when instances of non-compliance are identified.

Recommendation No.1

2.29 The ANAO recommends that the Attorney-General's Department 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.

Attorney-General's Department's response

2.30 Agreed. The Department will write to agency heads to advise them of any apparent consistent non-compliance with the FOI Act based on statistics in the FOI Annual Report. However, the Department has no power to ensure or demand compliance with the FOI Act (other than in relation to collection of FOI statistics).

2.31 The ANAO considers that some of the information in the FOI Annual Report could be presented in a more meaningful way. Some examples follow:

- The average revenue collected per FOI request in 2002–03 was \$6.28. This average is not indicative of the actual amount charged to applicants, because it is across the total number of requests as opposed

to those to which charges were applied. There may be scope to include more meaningful comparatives, including, for example, the number of requests to which charges were applied and the average charge across those requests. This issue is discussed further in Chapter 4.

- The table in the FOI Annual Report in 2002–03 shows agencies' Section 9 Statements as being correct at a specific date. The current wording of this table implies that the Attorney-General's Department has confirmed that the information in the Section 9 Statements is correct. The table actually reports the date that agencies' Section 9 Statements were posted on the National Archives of Australia register.

2.32 The FOI Annual Reports show that a number of requests were responded to outside the 30 day period allowed for by the FOI Act. The ANAO recognises that some requests, reported as having access decisions being made within the 31-60 day period, may be subject to a statutory extension to the timeframe. For example, the statutory period is extended to 60 days, where third party consultation is required. However, as there is no collection of information on the number of requests that are subject to statutory extensions of the timeframe, readers of the FOI Annual Report cannot draw a conclusion on the number of requests that are not finalised within the statutory period.²⁵

2.33 The Attorney-General's Department advised that it is aware of the need to amend the form used by agencies to submit statistics to more clearly differentiate between cases where, for various reasons, the time limit is extended under subsection 15(6) for consultation.

²⁵ This point is explained more fully in FOI Memorandum No.19: *Preliminary and Procedural Points*, as follows:

para 6.10: The 30 day period ceases to run where that applicant is notified of a preliminary assessment of an amount of a charge (section 29(1)), or of the imposition of a charge (section 29(6)) in respect of the request, and does not recommence until the payment of the charge or a deposit or a number of other occurrences take place (section 31(1) and (3), and see New FOI Memo No. 29, para. 32). Where an applicant does not receive a decision on a valid request within the 30 day period, or that period as extended, he or she is entitled to appeal to the AAT as if the request had been refused on the last day of that period (section 56(1)). Provision is made in section 56(3) for intervention by the Ombudsman within 30 or 60 day period if, on receipt of a complaint of unreasonable delay by an agency, the Ombudsman believes that complaint is justified.

para 6.13: It is open to the applicant and the agency to agree on a program of progressive (or staged) release of documents outside the time limits set by the FOI Act....

Recommendation No.2

2.34 The ANAO recommends that the Attorney-General's Department update the information captured by quarterly returns to enable a distinction to be drawn between requests finalised between 31 and 60 days, due to an extension in the statutory period, and those being finalised outside the statutory period.

Attorney-General's Department's response

2.35 Agreed. The quarterly return form will be amended by the Department to enable agencies to submit statistics for the 2003-2004 reporting year which indicate the number of requests finalised between 31 and 60 days as a result of statutory consultation requirements.

Other agencies' response

2.36 As the recommendation is directed at the Attorney-General's Department, most other audited agencies did not respond. However, the Australian Customs Service agreed with the recommendation.

FOI awareness

2.37 The Attorney-General's Department provides advice and assistance on the manner in which agencies should comply with their obligations under the FOI Act through its FOI homepage, on which is posted: the major FOI Memoranda; FOI decision summaries (until 1996);²⁶ general description documents to support the operation of the FOI Act; and copies of the FOI Annual Reports. The ANAO notes that, while not all memoranda are available electronically, the Attorney-General's Department can make these documents available on request.

2.38 The Attorney-General's Department also administers a network email discussion list called FOIAPPS, which enables subscribers to ask and seek answers to FOI questions. The network is used by the Attorney-General's Department to broadcast FOI policy information to subscribers. The network also supports discussions on issues that FOI Officers face in their current caseload. Such a network provides a mechanism for FOI officers to share issues, ideas and information with other people who are involved in the processing of requests.

2.39 The Australian Government Solicitor convenes a quarterly FOI forum in Canberra to keep FOI staff up-to-date with current FOI issues and

²⁶ FOI Memoranda 98, which covers exemptions, is reviewed regularly to reflect major decisions as they relate to the exemption provisions of the FOI Act. The Australian Government Solicitor also discusses significant decisions at its quarterly forums.

Administrative Appeals Tribunal decisions. The forum also provides a face-to-face network for staff processing FOI requests. In addition, the Australian Government Solicitor also produces a quarterly newsletter *In the Know*, which provides general information on freedom of information issues as well as decision summaries for recent significant Administrative Appeal Tribunal decisions.

2.40 The ANAO considers that the above mechanisms are pro-active. They provide for the ongoing education of staff responsible for processing FOI applications, for those staff that attend FOI forums or agencies that subscribe to FOIAPPS.

Section 9 Statements

2.41 Section 9 of the FOI Act requires the principal officer of each agency to make available, at the National Archives of Australia offices in all capital cities, a statement listing documents used by the agency in making decisions that affect the public. The statements are required to be updated at three monthly intervals where practicable, and, in any case, within 12 months after the last statement. Principal officers are also required to make available for inspection and purchase all documents listed in their agencies' Section 9 statements.

2.42 Of the 220²⁷ agencies identified in the 2002–03 FOI Annual Report as having to provide Section 9 Statements, only 105 (48 per cent)²⁸ had provided them to the National Archives of Australia (National Archives). Only 31 per cent of the Section 9 Statements provided to National Archives were current²⁹. The ANAO notes that neither the National Archives nor the Attorney-General's Department has in place processes that actively follow-up on outstanding/lapsed Section 9 Statements in a systematic and ongoing manner, even though the information is provided in an appendix to the FOI Annual Report.³⁰

2.43 The National Archives advised that it acts as a repository for the Section 9 Statements, but has no responsibility for monitoring the currency of

²⁷ The 2002–03 FOI Annual Report identifies 259 bodies that are prescribed for the purpose of the FOI Act; this number includes 39 Ministers and Parliamentary Secretaries who are not required to lodge Section 9 Statements. As discussed earlier, the ANAO has raised questions about the completeness of the population of agencies reported in the FOI Annual Report.

²⁸ Derived by the ANAO from information in the 2002–03 FOI Annual Report and the Section 9 Register on the National Archives website.

²⁹ As at 1 March 2004.

³⁰ In 1994, the then Minister for Justice, wrote to agencies outlining reporting obligations of Section 9 of the FOI Act and raising the issue of non-compliance. This letter was reproduced at Appendix R of the 1994–95 FOI Annual Report. Further, in 1999, the then Secretary of the Attorney-General's Department wrote advising of agencies' general obligations to the FOI Act, including Section 9.

statements or that the statements have been provided as required. The National Archives advised the ANAO that, should a member of the public wish to consult a Section 9 Statement that is not included on the register, National Archives would actively seek the information from the agency concerned.

2.44 The ANAO notes that it is relatively common for agencies to include a copy of their Section 9 Statements on their internet homepages. This process is consistent with the expectations of Government policy as articulated in the *Guide to Minimum Website Standards*, published by the then National Office for the Information Economy in April 2003. This document details the categories of information that must be provided to support *The Online Information Service Obligations*, which have been developed as part of the *Government Online Strategy*.

2.45 Rather than making a recommendation on the need for this provision to be actively monitored, the ANAO considers that, given the changes to the way that agencies provide information to the public through their homepage on the Internet, it is timely to review the ongoing relevance of the disclosure method contained in the provision itself. The National Archives advised the ANAO that it considered that such a review would be timely.

The impact of the operational environment on the FOI Act

2.46 There has been considerable change in the way the Australian Government operates since the FOI Act was introduced in 1982. These changes impact on all aspects of agencies operations, including FOI administration. Although the ANAO did not review the currency of the FOI Act generally, there are a number of provisions in the Act that do not fully cover or reflect the operation of Australian Government agencies today. These provisions include:

- Section 9—Certain documents to be available for inspection and purchase (discussed earlier);
- Section 15—Requests for access;³¹ and
- Section 28—Information Access Offices.

2.47 The Attorney-General's Department advised that it is aware of the possible need for technical amendments to these and other provisions in the FOI Act, and is progressing appropriate amendments.

2.48 As discussed earlier, the ALRC and ARC also raised the issue of the need for a review of the FOI Act in their 1996 joint report. While the decision on whether to undertake a review of the whole FOI Act is one for the

³¹ Amendment to this section would mean that the FOI Act is consistent with the approach following from the *Electronic Transactions Act 1999*.

Attorney-General to make, the ANAO considers it is important that the Attorney-General's Department continue to monitor changes to the operating environment, and their impact on the FOI Act, on an ongoing basis.

Conclusion

2.49 The ANAO concluded that, while there is general performance information available about FOI activity in the Australian Government, the value of the information in the FOI Annual Report is limited because:

- not all agencies required to report can be readily identified; and
- there is no Australian Government agency responsible for monitoring compliance with the FOI Act, or identifying opportunities for improvement from the information reported.

2.50 Although the FOI Act has not been fully reviewed since it was introduced in 1982, a number of technical amendments to the FOI Act are being considered so that the FOI Act continues to appropriately reflect the operations of the Australian Government.

2.51 The ANAO found that the Attorney-General's Department and the Australian Government Solicitor have effective mechanisms to provide general practical information to FOI practitioners about significant issues that may impact on the FOI process.

3. Control Environment

This chapter details the audit findings on the control environment in selected agencies.

Introduction

3.1 The control environment is the organisational context that reflects management's commitment and attitude to the implementation and maintenance of an effective control structure³² as part of a sound governance framework.

3.2 Organisations should establish a control environment that clearly sets out the responsibilities for the administration of FOI requests, and promotes sound management principles, including continuous improvement and cost-effective processing. The control environment that management promulgates through the agency will strongly influence the design and operation of control policies and procedures, and will determine how effective they are in mitigating risks and achieving objectives.

3.3 All agencies encounter some form of risk that can adversely impact on the achievement of their objectives. Assessing and treating risk is a major component of an effective control structure. It also involves the identification, analysis, assessment and prioritisation of risks that need to be treated.

3.4 The administration of FOI requests was assessed against the following elements of the control environment:

- risk assessment;
- culture and governance; and
- responsibility.

Audit criteria

3.5 The following table summaries the criteria that were used to assess the control environment in place for FOI administration in audited agencies.

³² Australian National Audit Office, op. cit., p. 10.

Table 3.1

Control environment

Audit Criteria	The agency has undertaken an effective assessment of the risk in relation to the administration of freedom of information requests. The agency fosters an overall environment conducive to good FOI administration.
Detailed Criteria	There is reference to the agency's obligations under the FOI Act in corporate risk assessment documents. There are statements on the potential impact of the risk of non-compliance with the obligations imposed on agencies by the legislation. The requirements of the FOI Act are adequately reflected in policies operational plans. The agency has allocated responsibility for FOI administration appropriately.

Audit findings

Risk assessment

3.6 The ANAO reviewed corporate risk and planning documents in each of the six audited agencies with a view to identifying the risk profile and treatments used in each agency for FOI administration.

3.7 While FOI administration was not identified as a high risk in any of the agencies audited, the ANAO notes that, at the start of the audit, five of the agencies had considered, as part of their risk management planning, risks associated with the administration of FOI. During the course of the audit, the sixth agency finalised its risk management plan, which also addressed risks relating to FOI administration. While some agencies' risk management and treatment documents contained considerable detail on FOI administration, others were more generic and focused on meeting legislative requirements in general.

3.8 Many of the specific risks identified related to the inappropriate release of information. As a result of the audit, the ANAO considers that, the converse risk that agencies are not able to identify all information relevant to the request prior to decisions being made, should also be addressed in agency risk assessments. Appendix 2 provides a list of possible FOI risks and treatments that agencies may wish to consider when undertaking their next FOI risk assessment.

3.9 The ANAO considers that, generally, agencies have in place processes that identify and allow for the appropriate treatment of risks associated with FOI administration.

Culture and governance

Policy and procedures

3.10 The ANAO considers that it is essential for agencies to clearly articulate their approach to FOI administration to support compliance with all the requirements of the FOI Act and enhance consistency in processing. This is particularly important in agencies where FOI processing is decentralised, either administratively or geographically.

3.11 The ANAO found that the approach used by agencies to articulate their individual processes and procedures for the processing of FOI requests varied considerably. Three of the audited agencies had developed clear policy and process documents. These documents articulated the manner in which the individual agencies processed FOI requests and outlined who was, or which areas were, responsible for the individual elements of FOI administration within the agency. Assigned FOI responsibilities in these agencies were consistent with the agencies' formal delegations and authorisations for FOI decision-making. In one of these agencies, the FOI Handbook remained in draft form and was still to be used by all officers with FOI responsibilities. The agency advised that it intends to release the final version of the FOI Handbook before the end of 2003-2004. The Handbook will constitute the main policy document that articulates the agency's approach to FOI issues. The agency will continue to update the FOI Handbook and issue instructions on FOI and privacy, as necessary.

3.12 Another agency had developed an FOI policy, which supported the transfer of all requests to a specific section within the agency, but did not detail administrative or decision-making processes. This agency, had a discrete section that had a sound understanding of all aspects of FOI administration, and was responsible for all elements/aspects of FOI administration. During the course of the audit, the agency undertook to review its policy and procedural documentation so that it fully reflected all FOI processes.

3.13 At the time of the audit, another agency was in the process of developing a detailed FOI policy and procedural document. This document has now been finalised.

3.14 In the sixth agency, the requirements of the FOI Act had not been translated into operational plans or processes and procedures because the agency considered that there was sufficient guidance available from FOI memoranda, the Attorney-General's Department's website and Australian Government Solicitor's training material. The agency advised that it is currently developing a quick reference guide/checklist to support advice to line areas and decision-making.

Recommendation No.3

3.15 The ANAO recommends that agencies develop an agency specific policy document which articulates the agency's approach to FOI issues, and related roles and responsibilities, and which is readily available to all staff.

Agencies' responses

3.16 The audited agencies either agreed, or agreed in principle, with the recommendation. Specific comments were provided by the following agencies.

Australian Federal Police

3.17 Agreed. The Australian Federal Police has an existing National Guideline on Information Released Pursuant to the Freedom of Information Act 1982.

Attorney-General's Department

3.18 Agreed. The Department supports this recommendation and recognises the value of such a document—particularly in agencies with decentralised decision-making structures. The Department, although it has a centralised structure, is nevertheless working on a 'summary of exemptions' document and will expand this to include the issues referred to in the recommendation.

Australian Customs Service

3.19 Agreed. This recommendation has been incorporated into our overarching FOI policy.

Department of Communications, Information Technology and the Arts

3.20 The Department's *FOI Guidelines*, issued in December 2003 and updated as necessary, articulate the Department's approach to FOI issues and related roles and responsibilities.

Personal Information

3.21 As noted earlier, the majority of FOI requests are for personal information. The ANAO noted that some agencies had developed administrative processes to support the release of personal information outside the FOI Act, while others process all requests through the FOI Act.

3.22 The ANAO considers that to release personal information outside the FOI process is likely to be administratively more efficient than if the FOI process is used. This is because, if the FOI process is used, it must be compliant with all of the requirements of the FOI Act. However, the FOI Act does provide certain protections for agency officers against defamation proceedings and certain other actions that maybe commenced following the release of documents, including documents containing personal information. These protections (discussed in more detail at Appendix 3) may not be available when the information is released outside the FOI Act.

3.23 In general, it is not necessary for an FOI request to be submitted by an individual or his or her nominated and authorised representative (such as an agent) for the individual to be given access to his or her own personal information.

3.24 Certain secrecy provisions in Commonwealth legislation, for example section 16(2)³³ of the *Income Tax Assessment Act 1936*, allow for the release of an individual's own personal information to that individual.

3.25 The release of personal information outside the FOI Act is only permissible where to do so would not breach the Privacy Act. The Privacy Act contains 11 Information Privacy Principles (IPPs) including IPP 11, which provides limits on the disclosure of an individual's personal information by the Australian Government.³⁴

3.26 The ANAO considers that there would be value in agencies looking at the manner in which they approach the release of personal information to the individual to whom the information relates. This could be done through a risk assessment that considers the potential costs of using FOI processes against the risk of the release of information without the protection of sections 91 and 92 of the FOI Act.³⁵ The ANAO does not advocate a particular approach, but considers that, if the release of personal information is going to be processed in accordance with the FOI Act, it is essential that all aspects of the legislation be complied with.

Records Management

3.27 The Ombudsman in his *Needs to know* report raised the adequacy of records management to support the identification of information requested through the FOI process. The Ombudsman made the following comment:

A common concern expressed by Freedom of Information practitioners is the difficulty in identifying and obtaining organisational records. It appears that few agencies have a central record of documentary and electronic records and in larger agencies recordkeeping has become so fragmented that it would be an extremely difficult task to identify all organisational records. This is more so in the case of restructured departments where the record audit trail is becoming increasingly faint.³⁶

³³ Subsection 16(2) *Income Tax Assessment Act 1936* prohibits disclosure of a person's information to any other person. Disclosure to the person, whom the information is about, is allowed under the provision.

³⁴ A detailed discussion on the legal considerations of the release of personal information is provided at Appendix 3.

³⁵ See Appendix 3 for a discussion on Sections 91 and 92 of the FOI Act.

³⁶ Office of the Commonwealth Ombudsman, *Needs to know—an own motion investigation into the Administration of the Freedom of Information Act 1982 in Commonwealth Agencies*, 1999, p. 26, paragraph 3.85.

There is concern that if the issue of Commonwealth recordkeeping is not addressed in the near future with a view to establishing uniform guidelines and practices, then the existing inadequate practices are likely to have a sustained adverse impact upon the operation of both the FOI and Archives Act. It also raises questions about the efficiency of an organisation's current archives, if its recordkeeping are such that the organisation is unable itself to fully draw on the repository of relevant information it holds.³⁷

3.28 These concerns were also reflected to some extent in the ANAO audit report *Recordkeeping in Large Commonwealth Organisations*, which concluded, in part:

- there was a significant risk of the non-capture and unauthorised disposal of records because:
 - organisations had not placed sufficient attention on the risks associated with recordkeeping, including those related to outsourced functions;
 - formal recordkeeping systems, which are intended to provide for the appropriate maintenance of records, were not being used to their full potential as not all records were being entered into the recordkeeping system;
 - limited controls were in place over electronic records, especially for those saved to shared network drives or personal workspaces;³⁸

3.29 The ANAO saw a variety of approaches for records management in the audited agencies. Two agencies used a formal records management system to support the processing of FOI requests. Another agency had an electronic record management system, but did not appear to use it to support the processing of requests beyond its file search capabilities. This agency advised that, for personal records, applicant's personal details can be read on the VIEW electronic system for location of the files. The files are then retrieved, examined and photocopied and copies are sent to the applicant. For more complex requests, the usual practice is to search for files on TRIM and VIEW electronic systems, and contact the line area, which deals with documents covered by the request, to identify the documents.

3.30 The remaining agencies relied on operational areas to identify and provide documents that related to the requests. The ANAO considers that such an approach meant agencies faced a risk that not all relevant documents would be identified. Further, as discussed previously the ANAO noted the risk of not

³⁷ *ibid.*, p. 27; paragraph 3.94.

³⁸ Australian National Audit Office, *Recordkeeping in Large Commonwealth Organisations*, Audit Report No.7 2003–04.

being able to identify all documents relevant to the request, due to inadequate record management, was not included in risk assessments. These assessments tended to focus on the risk of releasing inappropriate material.

3.31 The ANAO also found that requests made to operational areas generally focused on files and reports. There was no specific reference to electronic records, unless the requests received by the agency made a specific reference to such information. The ANAO considers that current approaches used in some agencies meant that requests were being responded to in a manner that sees information in a narrower context than that provided for by the legislation.

Recommendation No.4

3.32 The ANAO recommends that all agencies review existing practices to make provision for searches of both paper and electronic records, prior to access decisions being made.

Agencies' responses

3.33 The audited agencies either agreed, or agreed in principle, with the recommendation. Specific comments were provided by the following agencies.

Australian Federal Police

3.34 Agreed. The Australian Federal Police will implement the recommendation.

Attorney-General's Department

3.35 Agreed. The Department has always required a search of electronic records to be carried out by the relevant line areas before decisions are made. In the past the results of searches could vary due to technological limitations. However, since July 2003, the Department has implemented an Electronic Document Management System (EDMS) that provides a centralised repository for metadata on paper files and electronic documents, including the full text of documents. Both metadata and document content can be searched. Ultimately, the Department plans to migrate documents from the multiple shared file systems to the EDMS. The EDMS provides the capability to identify and retrieve both paper and electronic records relevant to FOI requests and will enable the Department to comply with this recommendation.

Australian Customs Service

3.36 Agreed. This recommendation has been incorporated into our overarching FOI policy.

Department of Communications, Information Technology and the Arts

3.37 The Department's *FOI Guidelines* stress the need for thorough searches for both hardcopy and electronic records. To ensure that those involved in processing FOI requests are reminded of this requirement, the Department has revised both the standard minute referring a request to the relevant line area, and the standard form schedule of documents, to draw officers' attention specifically to the need to search for electronic documents as well as hardcopy documents.

Department of Veterans' Affairs

3.38 The Department is well aware of the need to consider electronic records as part of the documents held in the Department and its current practice is to include electronic records as part of the Department's records. The Department agrees to review existing practices to enhance current procedures in place.

Responsibility for FOI administration

3.39 The ANAO notes that in his report, *Needs to know*, the Ombudsman recommended that agencies establish a centralised approach to processing FOI requests to provide greater consistency in decision-making. While the ANAO did not examine the quality of decisions, it concluded that the issue of centralisation/decentralisation was not a significant factor in whether FOI requests were processed consistently or efficiently.

3.40 Agencies' approach to processing FOI requests, which varied from being centralised to decentralised, was dependent on a number of issues including:

- organisational structure;
- number and type of requests received; and
- whether the agency has internal or external legal services.

3.41 All agencies, regardless of their structure for their decision-making, had a central repository of expertise to support the FOI Process. The effectiveness and quality of the support provided by agencies individual areas of expertise varied, but the one element that was critical to the consistency in processing was the existence of a central repository of expertise in FOI administration.

Conclusion

3.42 The ANAO concluded that, although FOI was not considered a high risk function, all audited agencies had considered issues about the administration of FOI as part of their risk management planning. However, the risks and treatments identified were not as comprehensive as they could have been for adequate effectiveness.

3.43 The detail provided in the policy and procedural documents on roles and responsibilities in relation to FOI obligations in operational plans varied considerably between the agencies audited.

3.44 All agencies, regardless of whether decision-making was centralised or decentralised, had a central repository of expertise that supported the FOI process. The effectiveness and quality of this support varied between agencies.

3.45 Requests made to operational areas tended to focus on files and reports. There was no specific reference to electronic records, unless the requests received by the agency made a specific reference to such information. The current approaches used in some agencies meant that requests were being responded to in a manner that saw information in a narrower context than that provided for by the legislation. All agencies should have in place processes and procedures that provide for searches of both paper and electronic records prior to access decisions being made.

4. Control Activities—Processing of Requests

This chapter details the audit findings, on the processing of FOI requests and other obligations prescribed in the FOI Act.

Introduction

4.1 Control activities are the specific practices, process and methodologies that help an entity:

- reduce risks while opportunities for improvement are identified;
- prevent or detect irregularities;
- safeguard assets; and
- maintain complete financial records and other relevant databases which accurately reflect the FOI activities of an entity.

4.2 An effective governance framework includes controls that minimise the impact of risks and contribute to the efficient and effective delivery of quality outputs and outcomes. Control activities promote compliance with organisational policies and procedures through the integrity, accuracy and completeness of administrative processes. Conversely, the failure of controls can create wide-ranging risks and, for this reason, emphasis should be more on preventative rather than detective controls.

Audit criteria

4.3 The following table summarises the criteria that were used to assess the procedures used by agencies in administering the FOI process.

Table 4.1

Control activities

Audit Criterion	The agency has developed and applied systems and procedures for the administration of the FOI process that are consistent with the requirements of the FOI Act.
Detailed Criteria	<p>Procedures that reflect the legislative requirements exist for processing FOI applications, including;</p> <ul style="list-style-type: none"> • acknowledgement of requests; • fees and charges; • access decisions; and • notification of decisions and rights of review. <p>Procedures that reflect the legislative reporting requirements are in place, including sections 8 and 9.</p>

Audit findings

Acknowledgement of requests

4.4 For an FOI request to be processed, it must be valid. Section 15 of the FOI Act outlines the requirements for a valid request. To be valid, an FOI request must:

- be in writing but does not have to be in a particular form;
- be accompanied by a \$30 application fee;
- specify an address in Australia for the service of notices; and
- be sent to the agency at a prescribed address.

4.5 Section 15(5)(a) of the FOI Act requires the agency or Minister to, as soon as practicable, but, in any case not later than 14 days after the day on which a valid request is received by, or on behalf of, the agency or Minister, take all reasonable steps to enable the applicant to be notified that the request has been received. The FOI Act does not specify the timeframe in which invalid requests should be acknowledged. Rather, agencies are required to assist people to make valid applications where they are able to do so.³⁹

4.6 Generally, agencies acknowledged valid requests within the specified period. The ANAO noted that the form of acknowledgements varied between agencies. The ANAO considered that the agencies that provided the clearest statement of the FOI process and the sort of response applicants could/should reasonably expect, were those that clearly acknowledged that: the request had been received; the agency had 30 days to provide a decision; and the date that the statutory period had commenced.

4.7 The ANAO found that 15 per cent of requests reviewed in the audited agencies were not valid in the first instance. The most common cause was that applicants had not included the application fee with their requests. Another common weakness was that the information sought was not described sufficiently to enable agencies to identify the information sought, and respond to the request.

4.8 All audited agencies had developed processes to advise applicants that requests would not be considered valid until the application fee was paid or the request clarified, as appropriate.

4.9 However, the ANAO found that the time taken by agencies to advise applicants that their requests were not valid varied considerably between, and

³⁹ Attorney-General's Department, *General Description of the Freedom of Information Act 1982*.

within, agencies.⁴⁰ As agencies are required to advise applicants that they have received a valid request within 14 days of receipt of the request, the ANAO considers that better practice would be for the same timeframe to be applied to advice about an invalid request.

Recommendation No.5

4.10 The ANAO recommends that, consistent with the requirements for valid requests, agencies implement an internal benchmark of 14 days for responding to invalid FOI requests and advising applicants on how to make FOI requests valid.

Agencies' responses

4.11 The audited agencies, with the exception of the Department of Veterans' Affairs, agreed with the recommendation. Specific comments were provided by the following agencies.

Attorney-General's Department

4.12 Agreed. The Department as a matter of practice, endeavours to ensure that all FOI requests, be they 'valid' or 'invalid', are acknowledged within 14 days of receipt.

Department of Communications, Information Technology and the Arts

4.13 Although the Department does in practice respond to invalid FOI requests within 14 days, the FOI Guidelines have been amended to expressly require this.

Australian Customs Service

4.14 Agreed. This recommendation has been incorporated into our overarching FOI policy.

Department of Veterans' Affairs

4.15 The Department notes that the recommendation of an 'internal benchmark of 14 days for responding to invalid requests' is not a requirement under the FOI Act. The Department handles a large volume of correspondence covering various issues from the general public and the veteran community. In light of this, the Department's Service Charter has a set benchmark of 28 days for responding to all correspondence, which both the general public and veteran community has generally regarded as acceptable. The application of this benchmark by the Department can result in non-complex matters (including invalid FOI requests) being responded to well within the 28 day timeframe and in many instances within 14 days. The Department considers

⁴⁰ Some requests were responded to on the same day while other took some weeks.

that invalid FOI requests should be handled in the same manner as other correspondence noting that many are responded to within 14 days or less.

4.16 ANAO comment: The ANAO recognises that the FOI Act does not require organisations to respond to invalid requests within 14 days. However, the Act does place an obligation on organisations to assist applicants in making their FOI requests valid. As such, the ANAO considers that it is not unreasonable for organisations to advise applicants within 14 days that their requests are invalid and the steps that need to be taken to make them valid. In addition, the ANAO does not consider FOI requests to be general correspondence and, therefore, the 28 day benchmark for responses may not be an appropriate one.

Fees and charges

General

4.17 For the purpose of the FOI Act, the term ‘fees’ relates to fees required by the FOI Act at the time the application is lodged or when an internal review is requested. ‘Charges’ are imposed specifically to support the processing of a request. Applications fees are standard⁴¹ and are stated in the FOI Regulations. Charges are calculated in response to the information requested and are calculated on individual requests.

4.18 Application fees and processing charges may be subject to remission in certain cases including, but not limited to:

- whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and
- whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.⁴²

4.19 *Freedom of Information Memorandum No.29—Fees and Charges* prepared by the Attorney-General’s Department outlines the Government’s policy in relation to the imposition of the fees and charges, as follows:

Government policy is that, where they are applicable, fees should be collected and processing charges imposed by agencies for FOI requests except where one or more of the reasons for remission or reduction or non-imposition of charges is established. The level of fees and charges provides for the 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

⁴¹ The application fee is \$30 while the fee for an internal review is \$40.

⁴² Section 30A of the FOI Act.

documents. The provisions for remission of fees, and for reduction or non-imposition of charges make adequate allowance for relief on grounds of financial hardship, public interest or any other relevant grounds. In addition, there are provisions exempting access to an applicant's own income support documents from fees and charges. In exercising any discretion conferred by the FOI Act and the Regulations in relation to fees and charges, agencies should bear in mind that s 3(2) requires the exercise of discretions conferred by the Act as far as possible to facilitate and promote the disclosure of information promptly at the lowest reasonable cost.⁴³

4.20 FOI Memorandum 29 also provides guidance on what is meant by financial hardship and public interest, when assessing whether fees should be remitted or charges not imposed or reduced. The ANAO considered that the guidance on how to assess whether it is in the public interest to give access to a document is comprehensive. However, while guidance for financial hardship is also detailed, it does not provide any financial thresholds that agencies could use to assess claims of financial hardship. The guidance provided limited advice on the other factors that agencies might take into consideration when deciding whether to impose a charge.

Fees

4.21 Application fees for FOI requests are imposed except where requests relate to documents sought to support an application for income support benefit. The ANAO noted that the agencies audited had generally adopted the practice of remitting, or waiving, the application fee where the applicant sought personal information.

4.22 The ANAO found inconsistency in whether fees and charges would be imposed within, and across, agencies. For example, one agency was satisfied with the provision of a copy of a pension card while another agency required full disclosure of the applicant's financial position.⁴⁴ Four agencies did not have clearly defined thresholds documented to support a waiver of fees due to financial hardship. The ANAO recognises that this is not as significant an issue in agencies that have a small number of requests and where the consideration of what charges should apply is centralised. However, it is more significant in agencies with a larger number of requests and/or where consideration of whether to impose charges is decentralised.

Charges

4.23 The *Freedom of Information (Fees and Charges) Regulations* provide for agencies to impose the following charges to support the processing of an FOI request:

⁴³ Attorney-General's Department, *Freedom of Information Memorandum No.29—Fees and Charges*.

⁴⁴ This agency advised that their statement of financial position is consistent with that used by the AAT.

- search and retrieval time—\$15 per hour;
- decision-making time—\$20 per hour;
- extraction and production of written documents from computers or other like equipment—actual cost;
- reproduction of computer information onto magnetic data—actual cost;
- transcripts of sound recordings, shorthand, etc—\$4.40 per page;
- replaying or copying of films, tapes, etc—actual cost;
- inspection - \$6.25 per half hour (or part thereof); and
- dispatch to an address other than an Information Access Office—actual cost.

4.24 For those requests where an application fee is charged, agencies need to make a separate decision on whether to impose a processing charge, and if so, the amount of the charge. In examining agencies' approaches to charges, the ANAO found differences in circumstances where a charge was imposed.

4.25 Individual agencies often restated Government policy in their internal guidance material on the imposition of FOI processing charges. However, the ANAO saw limited explanation of how the policy would be applied in individual agencies. The ANAO encountered differing approaches, both between and within agencies, with regard to imposing charges. The ANAO considers that, while there is such a degree of inconsistency in the approach between, and within, agencies to the imposition of charges, the issue of charges will be open to criticism.

4.26 One agency would not charge the applicant if it was only releasing a small number of documents. The number of documents to which this applied varied; some ten pages, others up to 70 pages. There was no written policy of what, from the agency's perspective, constituted a small number of documents. As a result, the ANAO found it difficult to determine when an applicant would, or would not, be charged and, therefore, draw a conclusion about the consistency of adherence to agency policy.

4.27 In a second agency, the ANAO noted a number of instances where the agency advised applicants that, due to agency delays, application fees would not be applied; in these instances processing charges were not imposed either.

4.28 In a third agency, for some applicants, charges were estimated and imposed, while other applicants, with similar requests, were not provided with an estimate of charges, and no charges were imposed. In instances where an estimate of charges had not been prepared, there was no record of why charges

would not be imposed, and the ANAO was unable to identify the basis for imposing or not imposing charges.

4.29 The ANAO noted that a fourth agency did not collect any processing charges during the period subject to audit review. The agency advised that it did not have a policy of not imposing charges, but stated that, during the period, no requests warranted the imposition of charges. The agency reserved the right to impose charges when deemed appropriate to do so.

4.30 The remaining two agencies appeared to have internally consistent/uniform approaches to the imposition of charges. In one of these agencies, charges were applied to all requests that were not for personal information. The other agency only received requests for other information, all of which were subject to processing charges.

4.31 The ANAO considers that the existing guidance could be enhanced to better detail the issues that delegates could take into account when making a decision on whether to impose processing charges. Such issues could include:

- whether the request is for the individual's own personal information;
- ease of access to the information;
- scope and clarity of the requests;
- volume of review—for example, the number and/or complexity of documents to be reviewed;
- size of release;
- relationship management—for example, applicants' broader dealings with the agency;
- internal processing costs—for example, internal processing costs are greater than the charge to be imposed; and
- external timeframes.

Recommendation No.6

4.32 The ANAO recommends that the Attorney-General's Department update guidance material to provide a framework, that delegates might use when considering the issue of waiving/remitting application fees, and imposing processing charges.

Attorney-General's Department's response

4.33 Agreed. The provisions in the FOI Act for remission of fees and for reduction or non-imposition of charges make allowance for relief on the grounds of financial hardship, public interest or any other grounds. A decision-maker therefore has a discretion in making a decision about remission

of fees and reduction or non-imposition of charges. It is not possible to be prescriptive in guidance material about how that discretion should be exercised. However, the Department will update relevant FOI Memoranda to provide additional considerations, which decision-makers may wish to take into account.

Other agencies' response

4.34 As the recommendation is directed at the Attorney-General's Department, most other audited agencies did not respond. However, the Australian Customs Service agreed with the recommendation and informed that the recommendation had been incorporated into their overarching FOI policy.

4.35 Further, variations across agencies include the point in time at which an agency issues an estimate of charges to the applicant. Some agencies aimed to do this as soon as possible and would, generally, provide the applicant with an estimate of charges estimate within 14 days. However, others would wait until all documentation was received from operational areas prior to making an estimate of processing charges. In these instances, the issuing of the estimate sometimes occurred more than 30 days after the receipt of a valid request. This meant that the request could not be finalised within the 30 day statutory period.

4.36 The ANAO noted a number of instances where once the agency had provided an initial estimate of charges, applicants revised their initial requests so that they were more focused on the actual information required. Also, an applicant may decide to withdraw his or her request upon receipt of an estimated charge. The ANAO considers that there is scope for agencies to consult with applicants to clarify/define broad requests prior to providing formal estimates of charges, or advice of their intention to refuse a request.

4.37 As the imposition of charges is left to the discretion of the Minister or agency, each agency has its own approach, outside the financial hardship or public interest tests referred to earlier on whether to impose charges. There is limited guidance available to agencies to assist their decision as to whether to impose charges, for reasons other than financial hardship or public interest, and the basis for remittance and waiver.

4.38 Where charges were imposed, all audited agencies used the charges calculator supplied by the Australian Government Solicitor.⁴⁵ The ANAO found that the calculation of fees and charges was consistent with the *Freedom of Information (Fees and Charges) Regulations*.

⁴⁵ The Australian Government Solicitor and the Department of Communications, Information Technology and the Arts developed the calculator jointly.

Deemed Withdrawals

4.39 Deemed withdrawals may occur when applicants fail to respond to the estimate of charges provided by the agency. While the estimate of charges advice provided to applicants by agencies stated that the failure to respond to the charges notice would result in the request being deemed withdrawn, the ANAO considers that it would be prudent for agencies to advise the applicants. This advice could be in the form of a letter advising that, because the applicant had not responded within 30 days, the agency now considered the request to be withdrawn. This simple administrative mechanism would not only improve client service but would also mean that files and records are being dealt with (or closed) in an appropriate manner.

4.40 Once a request has been deemed withdrawn it is necessary for the applicant to lodge a new request, including the application fee, should they wish to proceed with their request. In these instances, where the applicant can demonstrate extenuating circumstances, it may be appropriate for agencies to consider waiving the second application fee if it applies to the same information sought in the original request.

Access decisions

4.41 The FOI Act requires that primary decisions on the access to information be made within 30 days of receiving a valid request. The FOI Act provides for extensions of this timeframe for third party consultation and for the processing 'time clock' to be stopped in particular circumstances, such as, clarification with the applicant.

4.42 The FOI Act requires primary decisions on the release of information to be made by authorised persons. Decisions on the release of information may include any or a combination of the following elements:

- access to documents;
- the form of access;
- deferment of access;
- deletion of exempt matter or irrelevant material; and
- refusal of access (for a variety of reasons).

4.43 The FOI Act also requires that the primary decision include the reasons for the individual elements of the decision on the refusal to provide access. Such decisions should also detail the applicant's right of review under the FOI Act, including internal review and reviews by the Administrative Appeals

Tribunal or for the Office of the Commonwealth Ombudsman to investigate individual complaints.⁴⁶

4.44 In five agencies, the majority of valid requests reviewed during the audit, not subject to a statutory extension in timeframe, were finalised within the 30 day statutory period. The requests reviewed in the sixth agency took, on average, 49 days to finalise.

Notification of decision and rights of review

4.45 All primary decisions relating to requests reviewed during the audit were advised to the applicant in writing, and were generally in accordance with the requirements of the FOI Act.

4.46 The ANAO noted that where primary access decisions related to partial release of information or a refusal, rights of review were generally provided to the applicant as required by the FOI Act. In a small number of instances, agencies did not provide full details of rights of review and avenues for complaint, for example, appeals to the Administrative Appeals Tribunal, as part of the access decision.

4.47 During the course of the audit the ANAO identified a number of instances where agencies had advised applicants that full access to documents had been provided.

4.48 It is appropriate for agencies to make primary decisions providing full access. However, the ANAO considers that unless agencies' record management practices are such that the agency can be confident that all appropriate material has been identified, there is a risk that not all relevant documents or parts of documents have been considered by the delegate as part of the decision-making process. The ANAO identified a number of examples where, although access decisions purported to be releasing all documents, the agency later became aware that other documents, or relevant material in other documents, did in fact exist.

4.49 The FOI Act does not require details of review rights to accompany primary decisions where full access has been provided.⁴⁷ The ANAO also notes that all access decisions made by agencies are reviewable in accordance with the FOI Act. The ANAO considers that it would be preferable for all primary decisions to be accompanied by details of applicants' legislative rights

⁴⁶ Section 26 of the FOI Act.

⁴⁷ Section 27A of the *Administrative Appeals Tribunal Act 1975* provides for the notification of review rights in relation to the decisions that are reviewable by the Tribunal may apply. In November 1994, the then Attorney-General issued under section 27B of the *Administrative Appeals Tribunal Act 1975*, a *Code of Practice for Notification of Reviewable Decisions and Rights of Review*.

of review. This is consistent with advice received by the Australian Government Solicitor, which stated that in its opinion:

... a notice of review rights (as required by section 26) should accompany all original decisions even where the agency purports to be releasing all documents in full and in the form sought. This is because the applicant may not be satisfied that all relevant documents have been identified and retrieved or that access has been given in the form sought (section 20). This may not be necessary in the case of an internal review decision because usually the applicant has said what part of the decision he or she is not satisfied with and would normally be expected to have claimed the existence of further documents if that was a concern. However, for the utmost of caution, it would do no harm for a notice to accompany an internal review decision as well notwithstanding that the decision is to release all.

4.50 Generally, agencies agreed with including rights of review in all primary decisions, although some expressed concern that it would be unnecessary and confusing to advise applicants of their review rights when it was clear that the request had been met in full. Applicants who believed that the agency had not provided full access to all documents would make the agency aware of this and seek a review in any case.

4.51 The ANAO acknowledges these concerns but considers that it would be better to give applicants full details of their review rights for all primary decisions because of the risk that not all documents or material had been identified.

Recommendation No.7

4.52 The ANAO recommends that the Attorney-General's Department amend the relevant FOI Memoranda to state clearly that better practice would be for agencies to provide applicants with details of their rights of review for all primary decisions. This requirement could also be considered and recommended when amendments are next being made to the FOI Act.

Attorney-General's Department's response

4.53 Agreed in-principle. The Department will consider this issue further.

Other agencies' response

4.54 As the recommendation is directed at the Attorney-General's Department, most other audited agencies did not respond. However, the Australian Customs Service agreed with the recommendation and advised that the recommendation had been incorporated into their overarching FOI policy.

Reviews

4.55 The FOI Act provides for three formal review mechanisms when applicants are not satisfied with the decision on their FOI request:

- internal review;
- appeals to the Administrative Appeals Tribunal (AAT); and
- complaints to the Commonwealth Ombudsman.

Internal review

4.56 Where a decision has been made not to grant access to documents to the applicant or where a decision has been made not to disclose a document, the applicant has an entitlement to have that decision reviewed internally by the agency concerned. It is generally required that applicants seek an internal review prior to exercising other avenues of review.

4.57 Each audited agency had a slightly different approach to processing internal reviews. All the agencies had measures in place to provide for the independence of the reviewer from the primary decision-maker.

4.58 The internal review decisions examined during the audit generally affirmed the primary decision. The ANAO noted that in a small number of reviews additional documents were identified during the internal review process, and decisions on these newly identified documents, also formed part of the internal review decision.

AAT

4.59 Section 55 of the FOI Act provides that applicants may apply to the AAT for review of a number of decisions relating to requests for access including refusing to grant access to documents in accordance with the request or granting access to a document but not granting access to all documents to which the request relates.

4.60 While section 55 is the primary section under which applicants may appeal to the AAT, other sections of the FOI Act also provide for the AAT to have a broader jurisdiction over access decisions.⁴⁸

4.61 Applicants can appeal to the Federal Court from the AAT on a question of law, or may apply to the Federal Court under the *Administrative Decision (Judicial Review) Act 1997*.

4.62 In the audited agencies, the ANAO identified only one applicant who lodged an appeal to the AAT in relation to an FOI request processed by the

⁴⁸ Other sections of relevance include sections 56, 58F, 59 and 59A.

agency during 2002–03. The AAT largely affirmed the agency’s decision on the disputed documents. The only exception being a variation to the deletions regarding one document. The AAT decided that additional material in that document could be disclosed.

Commonwealth Ombudsman

4.63 An applicant may also apply to have an agency’s decision investigated by the Ombudsman. Although, the Ombudsman does not have the power to change a decision made by an agency, the Ombudsman can suggest that an agency reconsider a decision. Indeed, a person who has complained to the Ombudsman about a decision may not apply to the AAT for review unless, and until, the Ombudsman has advised that the application has ceased or that there will be no investigation.⁴⁹

4.64 The ANAO did not find any examples of applicants making a complaint to the Ombudsman in the FOI requests reviewed during the audit.

Client service

4.65 In general, the ANAO found that FOI teams had a strong focus on providing assistance and advice to applicants about their requests, and the FOI process in general. This was most apparent in instances where applicants had lodged invalid requests, or it had become obvious that decisions in relation to requests would not be finalised within the statutory timeframe. Applicants were advised of either the steps necessary to make their request valid, or that the timeframe could not be met, but that a decision would be made as soon as practicable.

4.66 While this approach keeps applicants informed about the progress of their request, such communication does not change the requirement for agencies to make the access decisions within 30 days unless, consistent with Section 15(6) of the FOI Act, the period has been extended to allow for third party consultation.

Section 8 Statement

4.67 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; arrangements for public involvement; documents held by the agency; and how members of the public can obtain access to these documents. Further, consistent with the requirements of Section 8, the *Requirements for Annual Report—for Departments, Executive Agencies and FMA Act Bodies* requires each

⁴⁹ Section 57 of the FOI Act details how a person might make a complaint to the Ombudsman.

agency to include in their annual report a statement about its operations, as follows:

- the organisation, functions and decision-making powers of the agency;
- the arrangements for bodies or persons outside the Commonwealth to participate in the formulation of policy by the agency, or in the administration by the agency, of any enactment or scheme;
- the categorises of documents that are maintained by the agency;
- the facilities that are provided by the agency for enabling members of the public to obtain physical access to the documents of the agency; and
- FOI procedures and initial contact for inquiries.⁵⁰

4.68 All of the audited agencies met the requirements of Section 8, by providing relevant details in their 2002–03 annual reports.

Section 9 Statement

4.69 Section 9 of the FOI Act requires agencies to make available, at National Archives offices in each capital city, a statement listing documents used by the agency in making decisions that affect the public. The issue of general compliance with section 9 across all agencies was discussed in Chapter 2. The ANAO also examined the content and currency of the Section 9 Statements of the audited agencies.

4.70 The ANAO was unable to identify any record of one agency’s Section 9 Statement being received by the National Archives.⁵¹ This agency provided an up-to-date Section 9 Statement to the National Archives during the audit.

4.71 At the time the audit commenced, another agency’s Section 9 statement lodged with the National Archives was dated 1 July 2001. The agency acknowledged that an update was required and forwarded it to the National Archives, and appended it to its 2002–2003 Annual Report. A third agency’s Section 9 Statement was also dated 2001. However, this has since been updated and a revised Statement provided to National Archives.

⁵⁰ This requirement is set out in section 8 of the FOI Act, it is also reflected in *Requirements for Annual Reports—for Departments, Executive Agencies and FMA Act Bodies*; which is approved by the Joint Committee for Public Accounts and Audit under subsection 63(2) and 70(2) of the *Public Service Act 1999*.

⁵¹ While the Agency provided an email addressed to the National Archives in October 2001, the National Archives advised that it had no record of having received the Section 9 Statement.

4.72 The National Archives website showed that the remaining three agencies had provided updated Section 9 Statements within the previous 12 months.

Recommendation No.8

4.73 The ANAO recommends that agencies implement a process for: the review of Section 9 Statement details, which lists documents used by the agency in making decisions that affect the public, at least annually; and the provision of revised statements to National Archives of Australia in a timely manner.

Agencies' responses

4.74 The audited agencies either agreed, or agreed in principle, with the recommendation. Specific comments were provided by the following agencies.

Australian Federal Police

4.75 Agreed. The Australian Federal Police has procedures in place for the annual revision of the section 9 Statement.

Attorney-General's Department

4.76 Agreed. The Department supports this recommendation and will take steps to ensure the requirement to review section 9 statement details is incorporated into existing processes established to facilitate compliance with other Departmental obligations.

Australian Customs Service

4.77 Agreed. Customs will report on compliance in its annual report.

Department of Communications, Information Technology and the Arts

4.78 The Department's section 9 statement was updated within the last 12 months, and has been provided to the National Archives of Australia as required by the *Freedom of Information Act 1982*.

Conclusion

4.79 The ANAO concluded that most agencies had developed and applied systems and procedures for the administration of the FOI process that were consistent with the requirements of the FOI Act. These procedures reflected the legislative requirements for:

- processing FOI applications;
- providing advice to applicants; and
- processing of the review/complaint process.

4.80 In most instances requests for information were acknowledged within the 14 day statutory period. The time taken by agencies to advise applicants that their requests were invalid, and the action the applicant was required to take before the agency could process the request, varied from being almost immediate to taking several weeks.

4.81 The ANAO found that, in the majority of valid requests reviewed, agencies had advised applicants of the access decisions within the 30 day statutory period.

4.82 The consistency between, and within, agencies on decisions whether to impose processing charges varied, and the ANAO saw limited guidance, beyond financial hardship and public interest, at both the agency and whole of Government level to support the basis of such decisions.

5. Information and Communication

This chapter focuses on how information for the requirements of the FOI Act is promulgated through agencies. The chapter also considers the level and appropriateness of training provided to staff, both general and those with specific responsibility for processing or decision-making of FOI requests.

Introduction

5.1 Effective information and communication arrangements are fundamental for an entity so that it achieves its strategic and business objectives by providing a solid foundation for informed decision-making and performance reporting. Information and communication arrangements can differ depending on the size, structure and geographical distribution of the entity and involve both manual and computerised systems.

Audit criteria

5.2 The following table summaries the criteria that were used to assess the information and communication processes used in audited agencies for FOI administration.

Table 5.1

Information and communication

Audit Criteria	The agency communicates effectively both organisational and individual obligations under the FOI Act to staff, and clearly articulates resultant administrative arrangements to meet these obligations.
Detailed Criteria	Training in relation to FOI administration is made available to staff in general. FOI obligations are raised in induction or other generic information used by staff to understand the Australian Government operating environment. Training is made available to staff who are involved in processing FOI requests. Training is made available to staff with decision-making delegations for FOI requests.

Audit findings

FOI awareness training for all agency staff

5.3 The ANAO considers that across most agencies audited there was a consistent lack of FOI awareness among general staff. In three instances, agencies had an on-line induction process, through which new staff are

informed about FOI. In one agency, staff were required to work through an induction checklist and then have a general discussion with their Manager. It was not clear that FOI would be raised in these discussions, and there was no material available for the Manager to guide their discussion on FOI obligations.

5.4 The ANAO noted that the three agencies using electronic induction programs made FOI material available to new staff. In two of these agencies, the ANAO found at the time of the audit, that there was limited, or no, communication between the FOI Section and the officer responsible for the induction package about the inclusion of FOI. Generally, FOI Sections did not know what FOI information new staff were provided with. There was also no obligation on the FOI Section to check whether information being presented was either up-to-date or accurate.

5.5 Two agencies were not able to clearly articulate what, if any, FOI awareness training was provided to new staff. One of the agencies intended to review its induction courses to include more information about FOI and privacy issues. Further, in decentralised agencies, it was clear that the central office was unaware what FOI awareness training was conducted within regional/state offices.

5.6 In all agencies, graduates received comprehensive lectures/modules on administrative law, which included the FOI Act.

Training for FOI staff

5.7 The ANAO found that generally staff with direct responsibility for processing FOI requests had access to, and had completed, relevant training. The training available to staff was primarily the FOI specific Administrative Law Courses provided by the Australian Government Solicitor.

5.8 While FOI processing staff have been provided with the appropriate initial training, the ANAO considers that staff should be provided with refresher training to enable them to maintain their knowledge.

5.9 Some agencies have implemented national conferences where all staff, responsible for processing FOI applications, meet to discuss issues relevant to FOI. The ANAO considers this approach reflects better practice.

Training for FOI delegates

5.10 With the exception of one agency, the FOI Coordinator/Section could not provide the ANAO with details of the FOI training that the agencies FOI Delegates had undertaken. It was generally assumed, due to the position held by the delegate, that they must have had either FOI training or Administrative Law training at some stage in their career.

5.11 One agency, had in the past, provided half-day administrative law training session for all managers. However, this training was over 18 months ago and, since then, no further training had taken place. Another agency advised that it is in the process of negotiating with the Australian Government Solicitor to run a training course for internal review delegates. The agency, as a matter of course, provides a detailed information kit/guide on decision-making to internal review delegates and outlines how to get additional support in relation to all internal reviews.

5.12 With the exception of two agencies, the ANAO was unable to identify specific training for internal review delegates. The ANAO considers that agencies should provide relevant training, where necessary, to internal review delegates.

Recommendation No.9

5.13 The ANAO recommends that agencies instruct both primary and internal review delegates on their responsibilities under the FOI Act and the decision-making process within their agency, prior to their appointment.

Agencies' responses

5.14 All agencies, with the exception of the Department of Communication, Information Technology and the Arts, agreed, or agreed in principle, with the recommendation. Specific comments were provided by the following agencies.

Attorney-General's Department

5.15 Agreed. In the Department's view, agencies should ensure that all primary and internal review decision-makers within the agency have, prior to their appointment, attended appropriate FOI training courses conducted by the Australian Government Solicitor.

Australian Customs Service

5.16 Agreed. This recommendation has been incorporated into our overarching FOI policy.

Department of Communications, Information Technology and the Arts

5.17 The Department of Communication, Information Technology and the Arts considered that the objectives of recommendation nine are achieved in the Department without implementing the letter of that recommendation.

5.18 The Department receives a small volume of FOI requests each year, and the practice is for decisions to be made by SES officers in the line areas. Decision-makers are provided with information about their responsibilities under the Act and the decision-making process in the Department in two ways. Firstly, all FOI decision-makers in the Department have access to the Department's *FOI Guidelines*. Secondly, decision-makers are given detailed

and comprehensive advice and support by the Department's Legal Group throughout the decision-making process for a particular request. Decision-makers therefore have general information available to them, and are also given specific and targeted assistance and advice.

5.19 The Department considers that these arrangements ensure that decision-makers have appropriate knowledge about the FOI Act and the decision-making process. Given the Department's low FOI workload and devolved decision-making arrangements, these arrangements are also cost-effective. For the Department to require all its SES officers to attend lengthy formal FOI training sessions before being authorised as decision-makers would not be a cost-effective or practical way of providing them with appropriate information about the FOI process.

Conclusion

5.20 There is scope for agencies to improve how they communicate both organisational and individual obligations under the FOI Act to staff.

5.21 The principal training in relation to FOI administration made available to agency staff in general was graduate induction training, which tended to cover FOI as part of the administrative law section to the course. Other new staff were generally provided with an induction program, which included an administrative law element. The ANAO found that, generally, there was limited communication between agencies FOI Coordinators and officers responsible for the induction training to guarantee that the training provided was adequate, complete and up-to-date.

5.22 Staff with direct responsibilities for FOI processing had attended the FOI specific courses that are part of the Australian Government Solicitors Administrative Law Courses. These courses provide a sound foundation of all aspects of FOI processing and decision-making.

5.23 Staff with FOI decision-making delegations, particularly internal review decisions, while at an appropriate level did not always have to demonstrate an understanding of the FOI Act or their responsibilities, prior to being appointed a delegate.

6. Monitoring and Review

This chapter looks at the level and approach used by agencies for monitoring and reviewing of their FOI processes.

Introduction

6.1 Monitoring and review is the final component of an effective control framework. It is a key element of an entity's continuous improvement process that helps guarantee that the entity implements effective processes and tools to monitor and review relevant data. An effective monitoring and review environment is based on an established chain of accountability and includes the use of periodic reviews, such as those undertaken by internal audit and external consultants, as well as in-built review mechanisms.

Audit criteria

6.2 The following table summarises the criteria that were used to assess the processes used by the audited agencies in monitoring and reviewing FOI administration.

Table 6.1

Monitoring and review

Audit Criteria	The agency effectively monitors and reviews all aspects of the administration of information requests and other obligations under the <i>Freedom of Information Act 1982</i> .
Detailed Criteria	Monitoring or review occurs in relation to individual applications for information. The results of formal monitoring are used to inform management of any issues relating to administration of FOI requests. There is a formal reporting mechanism for outcomes of individual requests for information. Information is collated to meet the reporting of outcomes for agencies and the FOI annual report.

Audit findings

Internal reporting

6.3 All audited agencies had established internal reporting processes, which allowed management to monitor issues about the agencies' administration of FOI requests. These mechanisms included the provision of summary information for the number of FOI requests and reviews on hand at any time. These reports also detailed whether there were any requests before either the

Commonwealth Ombudsman or the Administrative Appeal Tribunal, and any other issues of note.

6.4 To support this high level reporting, branch managers received reports that generally detailed all requests on hand, as well as when decisions were due, and any other issues that need to be considered in relation to the individual requests or reviews.

FOI registers

6.5 To assist with the monitoring of the status of requests, all agencies utilised a register, designed internally to meet individual agency needs. While the ANAO identified a number of minor errors in the registers, generally, these errors did not have any impact on how these requests were reported in the quarterly statistical return provided to the Attorney-General's Department. Five of the six agencies audited had computerised their registers.

6.6 The ANAO noted that, of the six agencies audited, only three had structured their registers into a format which readily supported the calculation/compilation of quarterly statistical returns to the Attorney-General's Department. Of the other three agencies, one revised its register during the course of the audit, to better account for stoppages in the statutory period. These amendments were coupled with a conscious effort to provide for increased consistency in the data recorded in the register.

6.7 Further, the computerised registers of one agency were not in a format that supported the compilation of quarterly returns to the Attorney-General's Department. To facilitate the compilation of these quarterly returns, the information contained in the register was sent to another area within the agency for reconfiguration. This reconfiguration process provided for the provisions of the data in a form that supported the calculation/compilation of statistical information to the Attorney-General's Department. The agency was considering the purchase of commercially available computer software for this purpose.

6.8 Although all of the agencies audited were aware of their reporting requirements to the Attorney-General's Department, one agency did not consistently use the correct method for calculating the length of time spent processing an application.

6.9 Agencies are also required to provide details of the cost to the agency of administering the FOI Act. This is then aggregated by the Attorney-General's Department and included in the FOI Annual Report as the cost to the Australian Government of complying with the FOI Act. Of the agencies, audited there was only one agency that was able to provide a documented process as to how the cost of processing an application is calculated. Although some agencies made a concerted effort to obtain this information from line

areas, the FOI Coordinators did not always receive correct or complete information. In a number of situations, the FOI Coordinator would make an estimate as to the resources and time utilised.

Internal audit

6.10 The ANAO notes that in two agencies, the FOI function had been subject to internal audit review during the last three years. All organisations should consider using internal audit to periodically review the administration of FOI requests. This is particularly important where risk management plans indicate that FOI request administration is a risk faced by the organisations.

Conclusion

6.11 Generally, the audited agencies had in place processes that effectively monitored and reviewed the administration of information requests and other obligations under the FOI Act. The ANAO noted that there was scope for agencies to improve their processes for calculating the overall cost of complying with the FOI Act.

6.12 These processes included the monitoring or review of individual applications for information, as well as providing information that was used to inform management of any issues relating to administration of FOI requests.

6.13 Further, all of the audited agencies had formal reporting mechanisms to monitor the status of individual FOI requests. The agencies collected additional information designed to meet their annual reporting and the FOI Annual Report requirements.

Canberra ACT
24 June 2004



P. J. Barrett
Auditor-General

Appendices

Appendix 1: Agency FOI Obligations

In May 1999, the then Secretary of the Attorney-General's Department wrote to agencies advising them of their general obligations to the FOI Act. The attachment to the letter contained the following information.

What are your agency's obligations under the FOI Act?

Processing FOI requests: All agencies have obligations to respond to, and process, FOI requests within the time limits prescribed by the FOI Act. Agencies are encouraged to make available as much government-held information as possible consistent with the protection of essential government and private and business information.

FOI statistics: Section 93 of the FOI Act requires statistics to be provided to the Attorney-General's Department by agencies. These statistics are used by the Attorney-General, as the Minister administering the FOI Act, in compiling an annual report to Parliament on the operation of the FOI Act. Agencies are required to submit statistical returns every quarter and to provide an annual return.

Assistance to applicants: Where a person has made a request to one agency, which should have been directed to another agency, the first agency has a duty to take reasonable steps to assist the person to make the request in a manner that complies with section 15 of the FOI Act. The obligation to assist an applicant is complemented by section 16, which sets out the procedural requirements for the transfer of a request from one agency to another. Subsections 16(2) and (3) provide for the compulsory transfer of documents in certain circumstances.

Statement of Reasons: Where access is not granted as requested, section 26 of the FOI Act requires the applicant to be given a notice in writing (a Statement of Reasons). When claiming an exemption, an agency must give full reasons for claiming the exemption. Section 26 requires the decision-maker to 'state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision'.

Fees and Charges: It is government policy that where applicable, fees should be collected and processing and access charges imposed by agencies for FOI requests except where one or more of the reasons for remission of fees (s 30A) or for reduction or non-imposition of charges (subsections 29(4) and (5)) is established. The FOI Regulations contain a Schedule of fees and charges. 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 costs of providing FOI access to documents. In exercising any discretions conferred by the FOI Act and Regulations in relation to fees and charges, agencies should bear in mind that subsection 3(2) of the FOI Act requires the exercise of discretions conferred by the Act as far as possible to facilitate and promote the disclosure of information promptly at the lowest reasonable cost.

Section 9 Statement: Section 9 of the FOI Act requires the principal officer of each agency to make available at Information Access Offices (regional offices of the National Archives of Australia) a statement listing documents used by the agency in making decisions that affect the public ('Section 9 Statement'). A Section 9 Statement is required to be updated at three-monthly intervals where practicable, and in any case within 12 months after the last Statement. Principal officers are also required to make available for inspection and purchase all documents listed in Section 9 Statements.

Approval of decision-making arrangements: The FOI Act provides that a decision on an FOI request may be made by the Minister, the principal officer of the agency or by an officer acting within the scope of authority exercisable by him in accordance with arrangements approved by the responsible Minister or the principal officer of the agency. Agencies need to ensure that only those officers who have been authorised under section 23 of the FOI Act may make decisions under the FOI Act. Arrangements approved under section 23 should be recorded in writing and clearly identify (by name or position) the officers authorised to make decisions giving access to documents.

Section 8 statements: Section 8 imposes an obligation upon the responsible Minister for an agency to publish information concerning the functions and documents of agencies. While this obligation is not imposed directly upon agencies it is usually carried out by agencies. The information is to be published in the annual report, of the agency, or if the agency has no annual report it should be published in the annual report of the department which the Minister administers. The statement should include particulars of the following:

- the organisation, functions and decision-making powers of the agency;
- arrangements for persons outside the Commonwealth to participate in the formulation of policy by the agency;
- categories of documents maintained by the agency;
- facilities that are provided by the agency for enabling members of the public to obtain physical access to the documents of the agency; and
- FOI procedures and initial contact for inquiries.

Appendix 2: FOI Risk Assessment

Risk category	Risk	Treatment
Decision	<ul style="list-style-type: none"> • Release of inappropriate material. • Damage to the agencies reputation following the release of inappropriate information • The failure to release all appropriate information. 	<ul style="list-style-type: none"> • Advice on how to address complex requests; • Guidelines in place for processing FOI requests and obtaining of legal advice; and • Appropriate training for delegates.
Resourcing	<ul style="list-style-type: none"> • Inadequate/inappropriate resourcing 	<ul style="list-style-type: none"> • Provision of up-to-date information to staff with direct responsibilities in relation to FOI processing and administration. This is achievable through participation in the FOI forum and FOIAPPS, building a network of FOI contacts for staff, as well as agency specific mechanisms to provide up-to-date information to staff; and • Development of appropriate processes and templates to support all elements of processing FOI requests in a timely manner
Statutory Obligations	<ul style="list-style-type: none"> • Statutory periods not being met • Quarterly statistical returns not provided on time, or containing inaccurate or incomplete data • Under-reporting of costs involved in processing FOI requests 	<ul style="list-style-type: none"> • Client relationship building; • Development of appropriate processes and templates to support all elements of processing FOI requests in a timely manner and to increase consistency in FOI administration across an agency.
Recordkeeping	<ul style="list-style-type: none"> • Poor recordkeeping within the agency results in agencies not identifying and making decisions for all information within the ambit of the request (especially electronic records which could potentially be overlooked when fulfilling an FOI request). 	<ul style="list-style-type: none"> • Development of an agency culture that supports a proper understanding of, and support for, the intention and spirit of the FOI Act.

Source: ANAO in consultation with audited agencies.

Risk category	Risk	Treatment
Relationship management	<ul style="list-style-type: none"> • Client service and stakeholder relationships 	<ul style="list-style-type: none"> • Client relationship building
Training and Awareness	<ul style="list-style-type: none"> • Inaccurate/inappropriate advice provided to decision-makers; • FOI advice not meeting the needs of the Department; • Non-provision of an effective policy for implementing and complying with legislative and other Government requirements, including FOI: <ul style="list-style-type: none"> ◦ Decision-makers not having an adequate understanding of the FOI Act. ◦ Staff in line areas inappropriately vetting information/documents before it is/they are provided to the delegate for consideration. ◦ Policy and process documentation not providing sufficient guidance in specific areas, such as the imposition of fees and charges 	<ul style="list-style-type: none"> • Provision of up-to-date information to staff with direct responsibilities in relation to FOI processing and administration. This is achievable through participation in the FOI forum and FOIAPPS, building a network of FOI contacts for staff, as well as agency specific mechanisms to provide up-to-date information to staff; • Development of agency policy, which clearly articulates the role and responsibilities of both individuals and the agency in relation to FOI, and how broader government FOI policy will be implemented by the agency (for example in relation to the imposition of fees and charges); • All decision-makers have a detailed understanding of the FOI Act, particularly of the exemption, review and consultation provisions; • Development of an agency culture that supports a proper understanding of and support for, the intention and spirit of the FOI Act; • All staff involved in FOI processing have a detailed understanding of the FOI Act; • Existence of appropriate FOI training so that: <ul style="list-style-type: none"> ◦ All organisational staff are aware of organisational and individual obligations in relation to the FOI Act and other administrative law requirements; ◦ All staff involved in FOI processing have a detailed understanding of the FOI Act; ◦ All decision-makers have a detailed understanding of the FOI Act, particularly of the exemption, review and consultation provisions;

Risk category	Risk	Treatment
<p>Training and Awareness (continued)</p>	<ul style="list-style-type: none"> • Inadequate Training: <ul style="list-style-type: none"> ○ Organisational staff not being made aware of organisational and individual obligations under to the FOI Act and other administrative law requirements; ○ Staff involved in FOI processing do not have a detailed understanding of the FOI Act; ○ Decision-makers do not have a detailed understanding of the FOI Act, particularly in relation to the exemption, review and consultation provisions; ○ Limited understanding of FOI Act leading to agencies seeing FOI as the only mechanism for the release of information; ○ Applicant dissatisfaction due to limited/incomplete information being provided (particularly in relation to review mechanisms); ○ Inconsistency regarding the administration of FOI within agencies; and ○ Agencies will not meet all the reporting requirements of the FOI Act. 	<ul style="list-style-type: none"> • Training and retaining appropriately skilled personnel; • Training in agency processes/policies and templates to support all elements of processing FOI requests; and • Client relationship-building instruction is provided.

Appendix 3: Personal Information

Appendix three was developed by the ANAO in consultation with audited agencies and based on legal advice.

Mechanisms that exist for the release of personal information

In general, it is not necessary for an FOI request to be submitted by an individual or his or her nominated and authorised representative (such as an agent) for the individual to be given access to his or her own personal information. Certain secrecy provisions in Commonwealth legislation allows for the release of an individual's own personal information to that individual. Such provisions do not prevent information being released to the person it concerns. Providing access to individual information, which is often referred to as standard access, will not breach the Privacy Act, which envisages individuals being provided with access to personal information about themselves. It also allows disclosure to others with the individual's consent or in other circumstances such as where required by law.

However, the release of personal information outside the FOI Act can be done only where to do so would not breach the Privacy Act. The Privacy Act contains 11 Information Privacy Principles (IPPs) which govern the way in which an Australian Government agency may collect, use and disclose an individual's personal information. IPP 11 provides limits on the disclosure of personal information.

Release to the individual concerned

Information Privacy Principle 6 provides that an individual is entitled to have access to a record containing their personal information and that is held by a record keeper unless the recordkeeper (i.e. the agency or organisation) is required or authorised by law to refuse access to the document. Examples of circumstances where a recordkeeper may be authorised to refuse access would include:

- where the information is 'joint personal information' - that is, it contains information about another individual expressed in such a way that it cannot be separated from the information about the requesting individual and disclosure would not be authorised or required by the FOI Act;
- where releasing the information would jeopardise a process of criminal law investigation or enforcement; or
- where the disclosure is prohibited by secrecy laws and the personal information cannot be separated from the secret information.

Release other than to the individual concerned

IPP 11.1 states that a recordkeeper must not disclose personal information about an individual that is contained in a record to another person, body or agency unless one or more of the following exceptions apply:

- where the individual concerned is reasonably likely to have been aware, or made aware under IPP2... that information of that kind is usually passed to that person, body or agency (11.1(a));
- where the individual concerned has consented to the disclosure (11.1(b));
- where the recordkeeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person (11.1(c));
- where the disclosure is required or authorised by or under law (11.1(d)); or
- where the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue (11.1(e)).

If an agency does not comply with the IPPs it may be subject to an investigation by the Office of the Federal Privacy Commissioner. The Privacy Commissioner is empowered by the Privacy Act to investigate acts or practices of an agency that are alleged to interfere with the privacy of an individual. If the Commissioner is satisfied that an agency's actions constitute a breach of one or more of the IPPs he or she may find that the agency has interfered with an individual's privacy and negotiate a resolution. The types of resolution may include an apology to the individual, staff training, changes to internal systems and processes, compensation paid to the individual or a combination of those solutions. The Commissioner may also make a determination that includes a declaration that an agency has engaged in conduct constituting an interference with the privacy of an individual and declaring that the agency should not repeat or continue such conduct and redress any loss or damage suffered by the individual.

Protection provided to agencies by the FOI Act in relation to the release of personal information

Protection from civil actions

The FOI Act provides indemnity for agency officers against defamation proceedings and certain other actions (namely breach of confidence and breach of copyright other than Commonwealth copyright) that may be commenced

following the release of documents, including documents containing personal information, under the FOI Act. Pursuant to section 91 of the FOI Act, where access is given to a document under the FOI Act and that access was required to be given, or the decision-maker believed in good faith that access was required to be given, these actions cannot lie against the Australian Government, the agency or the officer who authorised the giving of access. The section will not protect reckless or negligent release so it is important that the decision-maker has taken all care to apply the provisions of the FOI Act. It will also not be available where an exemption could have been claimed but the decision-maker exercised a discretion not to claim the exemption.

Section 91 also provides limited protection for the author of the document, who is protected from such actions in respect of the publication which occurs when giving access under the FOI Act. However, the author may still be liable for defamation in respect of, for instance, any earlier publication, such as a publication to a fellow staff member. The passing of the information from a manager to the manager's personal assistant within an agency is a publication in this context as it will be to any person reading the file. The section does not give any protection to the recipient of the document.

Protection from criminal actions

The FOI Act also provides protection to decision-makers with regard to criminal sanctions. Pursuant to section 92 of the FOI Act a person authorising access to a document under the FOI Act or a person concerned in the giving of that access will not be guilty of a criminal offence by reason only of giving access to a document where that access was required by the FOI Act. Any other disclosure not concerned with FOI access will not be protected. Neither will the recipient of the document under FOI gain any indemnity of the disclosure.

Disclosure must be 'required'

These indemnity provisions apply only where the agency is 'required' to release the documents under FOI, which includes where the decision-maker has a bona fide belief that release is required. For example, reckless release would not be a bona fide release. An agency has discretion to release a document under the FOI Act even if it technically falls within one or more of the exemption provisions. If an agency decides to release personal information despite the availability of an exemption, the protections set out in the indemnity provisions are not available.

Protection from breaches of privacy

While it appears to be unnecessary for all requests for personal information to be processed under the FOI Act, the release of personal information under the

FOI Act will protect an agency from a claim that there has been an interference with an individual's privacy under section 13 of the Privacy Act.

Information Privacy Principle 11 in section 14 of the Privacy Act imposes a general obligation that an agency not disclose personal information to persons or organisations other than the individual concerned or their agent, unless one of the stated exceptions applies. A breach of IPP11 may lead to a finding by the Commissioner that the agency has interfered with the individual's privacy and a resolution as described above being negotiated. However, one of the exceptions to the prohibition on disclosure in IPP 11 is where the disclosure of the personal information is required or authorised by or under law (IPP 11.1(d)). The FOI Act is one such law. The protection is available both where the disclosure is required (as with the section 91 and section 92 protections) and where it is authorised (for example under subsection 18(2)). IPP11.1(d) in the Privacy Act distinguishes between a legal requirement to disclose personal information and an authorisation to do so. An agency may be required by law to disclose personal information in certain circumstances. Where an agency is authorised by law to disclose personal information, the agency may wish not to exercise that discretion and not disclose the personal information.

Appendix 4: Agency comments

This Appendix provides the general comments received from each of the audited agencies. Specific agency comments are included, where made, on individual recommendations throughout the report.

Australian Federal Police

The Australian Federal Police notes the proposed report and supports recommendations 3-5 and 8 and 9, noting that the other recommendations specifically refer to the Attorney-General's Department.

Attorney-General's Department

The Department welcomes the report. The Department notes there are challenges involved in processing FOI requests that, owing to the type of work it performs, are often complex in nature. The Department has worked hard to put practices and procedures in place that address these challenges. The recommendations made by the ANAO will be valuable as the Department continues in its efforts to continually improve its approach to FOI matters.

The report's comments and recommendations on FOI policy matters provide an important contribution to FOI policy development. As noted in the report, there is no entity with statutory authority to actively monitor and enforce compliance with the FOI Act. Nevertheless, the Department, in administering the FOI Act, will take further steps as appropriate to assist agencies to comply with the Act.

Department of Communications, Information Technology and the Arts

The Department agrees with the recommendations that are directed at line agencies, with the exception of recommendation nine. The Department either already satisfies, or has taken steps to implement, those recommendations. However, the Department considers that the objectives of recommendation nine are achieved in the Department without implementing the letter of that recommendation.

The Department's *FOI Guidelines*, issued in December 2003 and updated as necessary, articulate the Department's approach to FOI issues and related roles and responsibilities. The *FOI Guidelines* stress the need for thorough searches for both hardcopy and electronic records. To further emphasise this, the Department has revised relevant standard documents to draw officers' attention specifically to the need to search for electronic documents as well as hardcopy documents. Although the Department does in practice respond to

invalid FOI requests within 14 days, the *FOI Guidelines* have been amended to expressly require this.

In relation to recommendation nine, the Department receives a small volume of FOI requests each year, and the practice is for decisions to be made by SES Officers in the line areas. All FOI decision-makers in the Department have access to the Department's *FOI Guidelines*, and are given comprehensive advice by the Department's Legal Group throughout the decision-making process. The Department considers that these arrangements are a cost-effective way of ensuring decision-makers have appropriate knowledge about the FOI Act and the decision-making process. Requiring all SES Officers in the Department to attend formal FOI training before being authorised as decision-makers would not be cost-effective or practical, given the Department's low FOI workload and devolved decision-making arrangements.

Department of Veterans' Affairs

The Department generally agrees with the recommendations on the report.

Australian Customs Service

Customs welcomes the draft report. Progress in implementing recommendations which impact on Customs will be reported through the Audit Committee on which the ANAO attends.

Civil Aviation Safety Authority

Civil Aviation Safety Authority did not provide any general comments on the report.

Index

A

Access decisions, 7-8, 15-16, 31, 35-38, 49, 51-52, 60-64, 67
Administrative Appeals Tribunal, 14, 23, 26, 49, 61, 63
Administrative Review Council, 25-26
Attorney-General's Department, 13-17, 22, 24-25, 28-29, 34-42, 45-46, 49, 54-56, 58-59, 62, 66, 70, 73, 77, 86
Australian Customs Service, 14, 24, 25, 39, 46, 49, 54, 59, 62, 66, 70, 88
Australian Federal Police, 14, 24-25, 46, 49, 66, 86
Australian Government Solicitor, 15, 39, 40, 42, 45, 59, 62, 69, 70-71
Australian Law Reform Commission, 25-26
Australian National Audit Office, 7, 23, 43, 48

C

Charges, 7, 15, 17, 22, 26, 33-34, 38, 52, 55-60, 67, 77
Civil Aviation Safety Authority, 14, 24, 25, 87
Commonwealth Ombudsman, 8, 14, 23, 47, 61, 63, 64, 73

D

Department of Communications, Information Technology and the Arts, 14, 17, 24-25, 46, 50, 54, 59, 66, 70, 86
Department of Veterans' Affairs, 14, 17, 24, 25, 50, 54, 87

F

Fees, 8, 13, 17, 22, 33, 34, 52, 55-59, 77
FOI Act, 7-9, 13-17, 21-28, 30-42, 44-47, 52-55, 58, 60-66, 68-71, 73-74, 77-81, 83-88
FOI annual report, 35-40, 42 72-74
FOI Coordinator, 36, 69, 71, 74
FOI policy, 28, 39, 45, 46, 49, 54, 59, 62, 70, 80, 86
FOI register, 73

I

Internal review, 8, 17, 55, 60, 62-63, 70-71

M

Memoranda, 17, 39, 45, 55-56, 59, 62

N

National Archives of Australia, 17, 38, 40-41, 65-66, 78

P

Personal information, 8, 46-47, 82-85
Privacy Act, 8, 10, 26, 47, 82-83

S

Section 8 Statement, 64, 78
Section 9 Statement, 17, 38, 40-41, 65-66, 78

T

Training, 17, 26, 45, 68-71, 80-81

Series Titles

Audit Report No.56 Performance Audit
Management of the Processing of Asylum Seekers

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Department of Defence

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Department of Defence

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(Financial Year 2002–2003 Compliance)*

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Summary of Outcomes

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Department of Employment and Workplace Relations
Department of Transport and Regional Services

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Australian Agency for International Development

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Property Management

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Aboriginal and Torres Strait Islander Services

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Department of Communications, Information Technology and the Arts
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Department of Health and Ageing

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Audit Activity Report: January to June 2003
Summary of Outcomes

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Centrelink
Australian Taxation Office

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