

Office of the Information Commissioner

Western Australia

**FOI Standards and
Performance Measures**

A practical guide for agencies seeking to achieve “Best Practice” in FOI

May 1998

The contents of this document represent the outcome of a workshop attended by FOI Practitioners held on 28 February 1997, in conjunction with the Office of the Information Commissioner, Western Australia.

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Abbreviations

FOI	Freedom of Information
The Act	<i>Freedom of Information Act 1992</i>
WA	Western Australia

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Introduction

FOI legislation was enacted in Western Australia on 1 November 1993.

From the outset, a network of FOI coordinators was established to offer mutual support in the early days and to learn from the FOI experiences of each other.

By early 1997, members of the coordinators' network recognised that an opportunity existed to further develop standards and performance measures by which State and local government agencies could monitor and compare their FOI achievements.

The Information Commissioner was also keen for Western Australia to adopt a leadership role, both nationally and internationally, in the administration of FOI.

To that end, on 28 February 1997, the Information Commissioner sponsored a workshop involving approximately 35 participants drawn from a variety of agencies to identify "best practice" standards and performance measures.

The results of that workshop are presented in this document.

Background

Governments today have become the custodians of a vast amount of information upon which decisions are based that can profoundly affect, for better or worse, the lives of ordinary citizens. That is why access to information, as a matter of right, is essential for a healthy and democratic society.

The 1992 Royal Commission into Commercial Activities of Government and Other Matters explained the rationale for FOI legislation in the following way:

"Both the democratic and trust principles demand that government be conducted openly. They require that the public be informed of the actions and purposes of government, not because government considers it expedient for the public to know, but because the public has a right to know...openness in government is the indispensable pre-requisite to accountability to the public."¹

The themes of openness, accountability and responsibility are given effect in FOI legislation in the following ways:

- ◆ By providing a general right of access to government documents, with some exceptions, together with a corresponding duty upon agencies to provide clear reasons when access is denied.
- ◆ By requiring agencies to publish certain information about their structure, functions, operations, policies and practices.
- ◆ By providing a means for individuals to access and correct personal information that is inaccurate, incomplete, out of date or misleading.

The Information Commissioner acts as an independent and impartial umpire in disputes between agencies and applicants involving access to documents. In addition to other powers, the Information Commissioner is able to make a decision to the effect that access is to be given to a document, despite an agency refusing access in the first instance.

¹ Report of the Royal Commission into Commercial Activities of Government and Other Matters, Govt Printer Perth, 1992, Part II, para 2.1.3.

Purpose of Standards and Performance Measures

The Mission of the Office of the Information Commissioner is:-

Public understanding and confidence in the decision-making process of government agencies through access to relevant information

Taking into account that Mission Statement, the workshop decided that there are 3 major aims underpinning the development of standards and performance measurement:

Leadership

- ◆ *That the WA public sector becomes a leader in applying the processes required by FOI legislation and the objects and intent of the Act.*

Community Respect

- ◆ *To enhance the profile of each agency and the WA Government within the community.*
- ◆ *To demonstrate to the community and staff in agencies that FOI is taken seriously.*
- ◆ *To focus on the customers of public sector agencies.*
- ◆ *To demonstrate accountability, credibility and integrity.*

Continual Improvement

- ◆ *To achieve best practice.*
- ◆ *To introduce consistency so that meaningful comparisons of performance can be made.*
- ◆ *To understand the factors that underpin the success of FOI in agencies, including resources, education and policy issues, and to identify changes to the legislation that may be required.*

Complexity

The workshop recognised that performance measures for FOI are not particularly useful unless they reflect the relative complexity of each application. Factors that impact on complexity include:

- ◆ Degree of sensitivity (whether personal or non-personal information).
- ◆ Amount of consultation required with third parties, the applicant and within the particular agency.
- ◆ Extent of legal issues arising.
- ◆ Impact of s.28, involving indirect access through a suitably qualified medical practitioner.
- ◆ Effort required to locate requested documents, including the age, number and location of such documents.
- ◆ Number of third parties.
- ◆ Number of exemptions.
- ◆ Multi-agency involvement in an application.
- ◆ Extent of editing.

As a starting point, the workshop considered that high, medium and low complexity access applications could be categorised as follows:

High Complexity

**Huge impact of one factor
More than 3 factors**

Medium Complexity

The involvement of one or more third parties

Low Complexity

**A simple request for one or two documents
Requests involving similar kinds of documents
Requests for routine documents
Requests where no editing is required**

FOI Activities of Agencies

The 4 key activities of agencies when dealing with FOI issues were identified as being–



Key activity 1

Managing the FOI process



Key activity 2

Assisting and advising the parties



Key activity 3

Developing policy in agencies and educating staff



Key Activity 4

Evaluating performance

The standards, strategies and performance measures identified at the workshop for each key activity are not intended to be prescriptive. However, they may be useful if agencies wish to target particular FOI issues for specific purposes.

The performance measures identified at the workshop address the management goals of **efficiency** and **effectiveness**. They are both qualitative and quantitative and focus on short-term and long-term results.



Key activity 1

Managing the FOI process

STANDARDS

1.1 Timeliness and Cost

The application is dealt with in the most timely and most cost effective way that is consistent with the requirements of s.4 of the FOI Act.²

1.2 Searches

Effective searches are conducted for documents that meet the requirements of the application.

² Section 4 requires agencies to give effect to the Act in a way that assists members of the public to obtain access to documents; allows access to be obtained promptly and at the lowest reasonable cost; and assists the public to ensure that personal information in documents is accurate, complete, up to date, and not misleading.



Key activity 1

Managing the FOI process

STRATEGIES AND PERFORMANCE MEASURES

1.1

Strategies to achieve the standard in the agency

- ✓ *A good tracking system for FOI applications*
- ✓ *Mechanisms for effective communication with all parties*
- ✓ *A good records management system*
- ✓ *A good costing system*
- ✓ *Appropriate resources to handle FOI applications*
- ✓ *Appropriate culture and senior management support*

Performance measures

- ◆ *Number of days per application*
- ◆ *Number of hours per application*
- ◆ *Costs per application (compared with fees collected)*
- ◆ *Level of satisfaction (of customers, the agency, the FOI coordinator, and the Information Commissioner)*

1.2

Strategies to achieve the standard in the agency

- ✓ *A good records management system*
- ✓ *Ensuring that staff dealing with access applications have a good knowledge of roles, functions and information management in the agency*
- ✓ *Ensuring a clear understanding of the scope of an applicant's request*
- ✓ *Ensuring lines of accountability for searches undertaken are clear*
- ✓ *Keeping clear documentation for searches carried out*
- ✓ *Giving the requisite authority to staff dealing with an application to acquire the documents*

Performance measures

- ◆ *Success of the search in terms of the documents identified and found (or identified as legally destroyed); and finding sufficient documents to meet the request*
- ◆ *Additional documents located during external review*



Key activity 1

Managing the FOI process

STANDARDS

1.3 Decision-making

An effective decision-making process is utilised that is consistent with s. 3(3)³ and s.4 of the FOI Act.

1.4 Documentation

Accurate records exist that document the processing of an application.

1.5 Reasons

Clear reasoning that explains the FOI decisions made by the agency

³ Section 3(3) provides that nothing in the FOI Act is intended to prevent or discourage the publication of information, or the giving of access to documents (including documents containing exempt matter), or the amendment of personal information, otherwise than under the Act if that can properly be done or is permitted or required by law to be done.



Key activity 1

Managing the FOI process

STRATEGIES AND PERFORMANCE MEASURES

1.3

Strategies to achieve the standard in the agency

Performance measures

- ✓ *Researching all factors impacting on a decision*
 - ✓ *Identifying all interested parties*
 - ✓ *Adhering to the principles of natural justice*
 - ✓ *Ensuring decision-makers have appropriate qualifications and FOI expertise*
-
- ◆ Number (and %) of decisions varied by internal review, the Information Commissioner and the Supreme Court
 - ◆ Number (and %) of decisions accepted by the applicant and third parties
 - ◆ Number (and %) of decisions proceeding to external review

1.4

Strategies to achieve the standard in the agency

Performance measures

- ✓ *Maintaining an effective record-keeping system and auditing the trail of each FOI application*
-
- ◆ The number of reviews where the documentation of the process is considered adequate
 - ◆ Level of satisfaction by the decision-maker and other users of the file with the documentation of the process

1.5

Strategies to achieve the standard in the agency

Performance measures

- ✓ *Using plain English and wording appropriate to the application*
 - ✓ *Satisfying statutory requirements in relation to completeness of reasons*
 - ✓ *Implementing standard guidelines in the agency for documenting reasons*
-
- ◆ Number of queries received about the notice of decision
 - ◆ Adverse comments from the Information Commissioner and internal reviewers about the reasons given for a decision
 - ◆ Level of applicant satisfaction



Key activity 2

Assisting and advising the parties

STANDARDS

2.1 Negotiation

Assist the applicant when necessary to clarify and particularise the documents within the scope of the application

2.2 Communication

Open communication exists between the agency and all parties throughout the entire processing of an application



Key activity 2

Assisting and advising the parties

STRATEGIES AND PERFORMANCE MEASURES

2.1

Strategies to achieve the standard in the agency

- ✓ *Advising applicants and third parties of their rights under the FOI Act*
- ✓ *Reducing the resourcing impact on the agency by assisting the applicant to identify the documents most likely to satisfy the applicant's requirements*
- ✓ *Developing good negotiation skills*

Performance measures

- ◆ *Level of success in reducing the complexity and scope of applications (and hence the impact on the agency)*
- ◆ *Cost of each application*

2.2

Strategies to achieve the standard in the agency

- ✓ *Using a range of communication mechanisms*
- ✓ *Initiating communication (being proactive)*
- ✓ *Establishing effective relationships with all parties*
- ✓ *Ensuring clear, concise communication in plain English*

Performance measures

- ◆ *Level of satisfaction by all parties with the communication from the agency throughout the process*



Key activity 2

Assisting and advising the parties

STANDARDS

2.3 Timeliness

Decisions on access are made promptly and the parties are informed of the result as soon as possible

2.4 Responsiveness and Openness

The agency responds to requests for information, before and after an application is made under FOI, openly and without undue reliance on procedural technicality



Key activity 2

Assisting and advising the parties

STRATEGIES AND PERFORMANCE MEASURES

2.3

Strategies to achieve the standard in the agency

- ✓ *Acknowledging applications, where appropriate*
- ✓ *Making a decision as soon as practicable*
- ✓ *Ensuring on-going communication*
- ✓ *Seeking extensions of time (if necessary) in advance*

Performance measures

- ◆ *Level of satisfaction by all parties with the communication from the agency throughout the process*

2.4

Strategies to achieve the standard in the agency

- ✓ *Releasing information outside the FOI process if possible*
- ✓ *Maintaining an up-to-date Information Statement*
- ✓ *Avoiding unduly legalistic language*
- ✓ *Applying Customer focus principles*

Performance measures

- ◆ *Information Commissioner's Performance Indicators and Annual Report*



Key activity 3

Developing policy and Educating staff

STANDARDS

3.1 Training and education

Appropriate levels of understanding, acceptance and support for FOI exist across the agency.

3.2 Policy development

Policies within the agency reflect the requirements and spirit of FOI, including policy impacts of decisions by the Information Commissioner and the Supreme Court.



Key activity 3

Developing policy and Educating staff

STRATEGIES AND PERFORMANCE MEASURES

3.1

Strategies to achieve the standard in the agency

- ✓ *Instituting effective programs of formal and informal education*
- ✓ *Ensuring standards for record-keeping and report writing exist*
- ✓ *Publishing documents internally to promote and explain FOI*
- ✓ *Obtaining Corporate Executive support*
- ✓ *Resourcing for FOI activities is adequate, including staff for relief duties*

Performance measures

- ◆ Number of staff participating in training programs
- ◆ Effectiveness of training programs
- ◆ Level of understanding, acceptance and support of FOI by staff
- ◆ Level of satisfaction of agency staff in communications with or from the FOI coordinator

3.2

Strategies to achieve the standard in the agency

- ✓ *Involving the FOI coordinator and/or Decision-makers in the policy development processes of the agency that are affected by FOI*
- ✓ *Analysing and acting upon decisions made by the Information Commissioner and the Supreme Court*
- ✓ *Promoting awareness of and access to policy documents*

Performance measures

- ◆ The extent to which the FOI coordinator and/or Decision-maker has input into policies impacted by the FOI Act
- ◆ The extent to which the agency's policy documents reflect FOI where appropriate



Key activity 4

Evaluating performance

STANDARD

4.1 Administrative framework

An effective framework exists in the agency for evaluating and comparing FOI performance in agencies, across agencies and nationally, where appropriate



Key activity 4

Evaluating performance

STRATEGIES AND PERFORMANCE MEASURES

4.1

Strategies to achieve the standard in the agency

- ✓ *Using FOI performance information to lift the profile of FOI within the agency*
- ✓ *Gaining the support of the Information Commissioner to achieve the standards and to implement performance measures*
- ✓ *Integrating FOI standards and performance measures into the overall evaluation framework of the agency*
- ✓ *Sharing FOI experiences with other FOI coordinators and the lessons learnt from the adoption of the standards and performance measures*
- ✓ *Achieving consistency of measurement across agencies and enhancing the ability to compare performance*

Performance measures

- ◆ *The extent to which performance measurement is in place, is used and found to be useful*