

AUDITOR-GENERAL'S REPORT

PERFORMANCE AUDIT

Freedom of Information

**Ministry of Transport
Premier's Department
Department of Education and Training**

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Foreword

Most democratic societies recognise that Freedom of Information (FOI) is a fundamental element of government accountability. Opening government processes to scrutiny allows the public to question and better evaluate the activities the Government carries out on their behalf.

In New South Wales, FOI has been law since 1989. Since then, members of the public have had a legal right to access most information in most government agencies.

This report highlights key issues and illustrates the range of challenges which agencies face when handling FOI requests.

Dealing with FOI requests can be difficult for agencies. They may believe that information they provide could be taken 'out of context' and give an unfair view of their operations. Releasing information about sensitive decisions they have made may be embarrassing. Senior staff may also be well aware that certain information they release could be used in a political context and create difficulties for their Minister.

The FOI Act recognises that agencies might be tempted to avoid these potential difficulties, by using the discretions set out in the Act to limit the information released. This would frustrate the spirit of the Act, so it specifically requires agencies to apply FOI laws in a way that favours disclosure of information.

While this audit covered only three agencies, I believe that the issues and recommendations would be relevant for all bodies that handle FOI requests. This includes Ministers, most NSW government agencies and local government.

R J Sendt
Auditor-General

August 2003

Executive Summary

Executive Summary

What is FOI?

Freedom of information (FOI) laws aim to give people the right to obtain access to information held by the Government. They have been recognised as a fundamental element of government accountability and modern democracy, and have been adopted by governments worldwide.

NSW FOI legislation was introduced in 1989. People have the right to obtain access to information of a personal and non-personal nature.

The audit

In this audit we examined FOI arrangements in three government agencies. In total we looked at 84 FOI requests for non-personal information.

We did not review the basis of decisions. Rather we wanted to find out whether agencies acted in accordance with the spirit of FOI legislation. Section 5(3) the Act requires agencies to behave in a manner that furthers the objectives of the Act. In particular,

... facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.

Section 5(3)(b) of the *FOI Act 1989*

Audit Opinion

FOI Coordinators and their staff were supportive of the legislation. However, the agencies examined can do considerably more to fully achieve the intentions of the Act.

On the positive side, all three agencies had processes in place to handle requests and had made a number of changes to improve the effectiveness of the FOI process. Fees and charges had also been kept to a minimum. No processing fees were requested in the majority of cases, and if charged, were not unreasonable.

We believe there is value in making further improvements to address the following issues:

- processing fees being charged in some cases and not others even though a similar amount of work had been undertaken
- little documented evidence of the extent of searching which had been undertaken to locate documents, making subsequent reviews more difficult
- supporting reasons for refusing access to information not always being provided to applicants
- involvement of CEOs or Ministerial staff prior to some determinations being finalised, which opens the possibility for perceptions of interference and may affect an agency's capacity to conduct an unbiased internal review
- no routine or formal analysis of reviews of decisions to determine whether changes in practice are required
- timeframes not being achieved.

The degree to which these issues apply to each agency is detailed in the report.

Recommendations

All agencies that handle FOI requests should:

- | | |
|------------------------------------|--|
| Assisting applicants | <ul style="list-style-type: none"> ▪ clarify the scope of FOI requests at the earliest opportunity, particularly for large and complex applications ▪ provide applicants with information on the FOI process and the status of their request |
| Fees and charges | <ul style="list-style-type: none"> ▪ ensure that fees and charges are applied consistently |
| Searching for documents | <ul style="list-style-type: none"> ▪ conduct thorough and complete searches for documents ▪ document the types of searches undertaken to locate information ▪ ensure that adequate records management systems are in place to facilitate document searches |
| Making decisions on access | <ul style="list-style-type: none"> ▪ document the decision-making process, including all deliberations and viewpoints considered ▪ provide supporting reasons for refusing access to information ▪ identify all relevant documents to the applicant ▪ advise all applicants of their right to appeal |
| Independent decision-making | <ul style="list-style-type: none"> ▪ inform CEOs of the outcome of decisions in parallel with, rather than prior to, issuing the determination to applicants ▪ ensure that decisions on access to information are made independent of any undue influence ▪ ensure that all staff are aware of the purpose and key provisions of the Act ▪ ensure that staff involved in the FOI process have full authority to make decisions as required under the Act |
| Internal reviews | <ul style="list-style-type: none"> ▪ ensure internal reviews are conducted by someone other than, and more senior to, the original decision maker, as required by the Act ▪ introduce formal systems for reviewing the outcomes of internal and external reviews of FOI determinations. |
| FOI laws | <p>Any review of FOI legislation in NSW should consider:</p> <ul style="list-style-type: none"> ▪ the value of <i>Statements of Affairs</i> and <i>Summaries of Affairs</i>, and whether they serve their intended purpose ▪ extending timeframes when consulting the applicant or handling large multi-faceted requests. |
| Review mechanism | <p>The Government should:</p> <ul style="list-style-type: none"> ▪ consider introducing a review mechanism which routinely oversees FOI arrangements in NSW government agencies. |

Response from the Ministry of Transport

I refer to your letter of 11 July 2003 inviting the Ministry of Transport to provide a formal response to be incorporated into the FOI Performance Audit Report. This letter constitutes that response.

The Ministry is fully committed to the principles of increased transparency and accountability underpinning the Freedom of Information Act.

Although the audit focused on the period preceding my tenure, I have noted your remarks and have already taken steps to address the shortcomings identified in your report.

The Ministry has engaged an experienced FOI practitioner at a senior level within the agency. This officer will have responsibility for ensuring compliance with all aspects of the Act, including addressing the issues you have raised.

Some of your recommendations restate requirements of the Act, while others go further. I have outlined various actions below in response to specific recommendations.

Assisting applicants

The new FOI officer is developing a policy to provide guidance to agency staff involved in processing FOI applications. The policy will include a requirement to clarify the scope of applications upon receipt (where required), and to keep applicants informed of the status of their applications if any delay occurs.

Fees and charges

Fees and charges will be clearly specified and consistently applied. This will also be a policy requirement.

Searching for documents

As part of the FOI policy and education process, a new dedicated FOI page will be established on the Ministry Intranet. This will provide staff with an accessible source of information on their obligations under the Act, including advice on how to conduct appropriate searches.

Complete and thorough searches will be supervised and documented by a specifically nominated officer in each division of the agency. This officer will be personally responsible for verifying the adequacy of searches.

Agency records management systems will be reviewed to ensure that adequate document searches can be undertaken. Additional staff will be provided with training if necessary.

Making decisions on access

The new policy will incorporate guidelines on standards for determining FOI applications. These will include providing reasons for any refusal of access, identifying all documents relevant to an application and advising applicants of their appeal rights. The policy will draw upon publications of the NSW Ombudsman and Premier's Department.

Independent decision making

Determining officers within the agency have full authority to make decisions under the Act.

As noted above, the new Intranet page will provide an accessible tool for better educating staff about the Act. It will also carry information about the need to ensure independent decision making. This will be reinforced in the policy.

I note your concerns regarding agency CEOs being informed of the release of information under the Act prior to release to an applicant. You have argued that this can "open the door to perceptions of interference" and affect an applicant's right to internal review.

We respectfully disagree with this view. We submit that advising the CEO that information will be entering the public domain does not involve them in the decision making process.

It is fair that the CEO have an awareness of matters pertaining to the agency entering the public domain. As such, I believe it is an overstatement to say such action could be seen as interference.

Internal reviews

Internal reviews will be conducted by the Corporate Counsel - an officer not subordinate to the original decision maker as required by the Act. The FOI officer will be responsible for keeping abreast of external review decisions and legal developments on an ongoing basis.

FOI laws and Review mechanism

The Ministry expresses no view on your suggestions for legislative reform.

In conclusion, I reaffirm the Ministry's commitment to and proper application of the FOI Act. The above measures will help us to better put this commitment into practice.

More broadly, the Ministry will be utilising its role as a coordinating agency to ensure that FOI procedures are improved across the entire Transport portfolio. Our initial focus will be upon ensuring that statutory timeframes are adhered to. We will then provide whatever assistance we can to help other agencies further the objectives of the Act.

*(signed)
John Lee
Director-General*

Dated: 5 August 2003

Response from Premier's Department

This letter will be the formal response of the Premier's Department to the Performance Audit into Freedom of Information that has been carried out by Audit NSW for inclusion in the Final Audit Report that is to be tabled in Parliament and otherwise made publicly available.

I remain firmly of the view that your report as it is written may be misinterpreted, mischievously or otherwise.

The Premier's Department expresses deep disappointment with the nature and tone of the audit report. In the material provided to the Premier's Department in the course of scoping this audit, it was purported that the audit intended to examine "efficiency and effectiveness" issues in FOI. The Final Report appears to focus almost entirely on policy related issues, with almost no mention of strategies designed to promote these outcomes.

You will recall that I have written to you several times seeking your explanation of the potential benefits of this Audit, as well as the costs associated with it. It remains a disappointment that no response specifically addressing my concerns was ever received.

I have previously written to you with a comprehensive page by page critique of the draft report. While I note that many of the errors have been corrected and other matters clarified, the Final Report still lends itself to the possibility of misinterpretation, particularly with respect to the discussion on "bias and favouritism" and the issue of "intervention".

I am of the view that the comments made in the report in terms of "bias and favouritism" and "intervention" are inappropriate and unsubstantiated. I also note that this view was conveyed to your officers in our meetings. The tone used in describing the findings would result in any fair minded person drawing erroneous conclusions. Your office has not been able to conclude that any impropriety or inappropriate interference had occurred. Indeed, if any evidence was found that incriminated any Government officials, your office would be duty bound to report this conduct for appropriate investigation - as would I.

Your report also failed to note that a fair minded officer responsible for FOI matters consults broadly with respect to the information proposed for release. It is demonstrably in the best interests of FOI applicants that Determinations are both sound and correct, and are able to withstand the scrutiny of Internal and External Review. The robust nature of any internal views, given with frank and fearless candour, allows that process to take place in a transparent manner with the Determining Officer making the final decision, and taking responsibility for the ramifications of that decision.

Despite our concerns about the report and its methodology, the Premier's Department accepts all the recommendations as made in the Executive Summary. Those recommendations that require a legislative review of the Freedom of Information Act 1989 and the introduction of a "review mechanism" are noted and will remain, correctly, matters for the consideration of the Government of the Day.

As a general comment, the Premier's Department feels that the performance audit process has been gravely hampered by the absence of a Subject Matter Expert advising the Audit team. The lack of technical expertise of the Audit team, while not a reflection on their professional competency, has been a factor in the Audit team's inability to deal with the highly technical nature of the FOI Act.

This lack of technical expertise is demonstrated where the Audit team discusses the nature of the Cabinet exemption. Although significant commentary is provided on the Cabinet exemption, it remains unclear to the Premier's Department if the Cabinet Office was ever consulted on the impact of the discussion in the Audit Report.

In the absence of any definitive research or consultation by the Audit team, the Premier's Department has obtained the views of the Cabinet Office in respect of these comments, which are reproduced here below:

Whilst it is agreed that, in applying the Cabinet document exemption, an agency should:

- (1) identify the documents that fall within the scope of the request; and,
- (2) provide the reason the documents fall within the Cabinet document exemption (eg prepared for submission to Cabinet, draft or extract, official record of Cabinet or would disclose deliberations or decisions of Cabinet);

it is not agreed that there is a legal requirement or policy imperative to provide further information (such as the Cabinet committee that the document was prepared for).

The Cabinet document exemption is different to most other exemptions in the FOI Act in that it is a 'class' exemption that applies to all documents falling within that class. As long as it can be established that the document falls within one of the categories listed in Sch 1 Pt 1 item [1] (l)(a)-(e) that is sufficient reason for refusing access to the document.

The purpose of the exemption is to protect the confidentiality of Cabinet processes. It is not consistent with this purpose to reveal details like the Committee for which the documents was prepared, the date of the Cabinet meeting etc. Indeed, this kind of information is in itself exempt under the 'official record' part of the Cabinet document exemption.

Furthermore, in many cases the author of a document prepared for submission to Cabinet will not know whether full Cabinet or a particular Cabinet Committee will consider the document.

The Report makes no mention of the highly detailed and heavily scrutinised annual statistical reporting required of both Agencies and Ministers under the FOI Act. Such statistical reporting places on the public record the performance of agencies in terms of dealing with FOI applications.

The FOI process is subject to heavy scrutiny and public reporting, in addition to the many other public accountability mechanisms, such as Internal and External Reviews of FOI Determinations, internal and external auditing, Parliamentary questioning, Legislative Council committee references, and general correspondence from members of the public. FOI remains one of the most heavily scrutinised and exhaustively reported functions of an Agency's affairs.

The Premier's Department remains as committed as ever to the highest standards of ethical practice and accountability for the expenditure of public money. The Premier's Department remains totally committed to the principles espoused in the Freedom of Information Act 1989, as both practitioners of this Act and as the Agency of the Minister responsible for the FOI Act.

This commitment is demonstrated by the sponsorship and fostering of the FOI and Privacy Practitioners Network by the Premier's Department, the publication of explanatory FOI pamphlets and posters and the operation of the Premier's Department FOI Hotline providing free comprehensive FOI advice to the general public and to public sector FOI practitioners, as well as the publication of this material on the Premier's Department website at www.premiers.nsw.gov.au.

For reasons that are not immediately apparent, these services and activities appear to have been skimmed over in the Final Audit Report, rather than being treated as important context into how the Premier's Department actively support the Objectives of the Freedom of Information Act 1989.

The Premier's Department notes the costs of the audit and the length of time taken to complete the audit task, which has had a largely unacknowledged impact on the Premier's Department FOI function for a period considerably longer than that originally proposed by the Audit Office.

The Premier's Department remains satisfied that its FOI practices are of an acceptable, indeed an exemplary high standard. There is nothing in the Final Audit report to suggest otherwise. In a spirit of cooperation, several procedures and processes have been improved as a result of this Audit process. These policies will be promulgated across the sector for the broadest possible use in due course.

*(signed)
Col Gellatly
Director-General*

Dated: 14 August 2003

Response from the Department of Education and Training

I refer to your letter of 5 August 2003 enclosing the final report of The Audit Office's Performance Audit on Freedom of Information (FOI).

I would like to point out at the start that this was a retrospective audit of FOI requests received by the Department of Education and Training during 2002.

Because the audit was over 3 agencies, it should be noted that most of the recommendations are generic in nature and do not necessarily represent the practice in all Departments. In fact, many of the recommendations have been departmental practice for many years.

The report does not recognise the significant work done by the Department during late 2002 and early 2003 culminating in the introduction of new procedures for dealing with non-personal FOI requests in March 2003. These new procedures were developed in consultation with the office of the NSW Ombudsman well before the Performance Audit review.

In relation to recommendations concerning possible changes to FOI legislation, the Department questions the need for the Statement of Affairs and Summaries of Affairs. Considerable effort is expended to produce the annual and semi-annual Statements and Summaries, yet the Department has no record of a request for a copy of either.

Also, there may be a case for reviewing the timeframes for response taking into account the timeframes in other jurisdictions.

As far as your comments regarding the introduction of a review mechanism, it is considered that there are already bodies that play this role, (eg the Ombudsman's office).

I am concerned about your comments in relation to the independence of decision-making in relation to departmental determinations. In the specific case mentioned, information drafted in a tabular format was released in prose to provide an accurate explanation of the information. The Department granted access in full to all relevant documents and complied fully with the Act.

*(signed)
Jan McClelland
Director-General*

Dated: 12 August 2003

1. Introduction

1.1 Freedom of Information

What is FOI?

Freedom of Information (FOI) legislation provides people with the right to obtain access to information held by the Government. It also allows individuals to access and correct personal records. Although not stated in the legislation, it is commonly held that FOI laws are intended to open government processes to public scrutiny.

NSW FOI legislation was introduced in 1989. It applies to Ministers, local government and most NSW government agencies. People have the right to obtain access to information of a personal and non-personal nature.

Why is FOI important?

FOI has been recognised as a fundamental element of government accountability and modern democracy, and has been adopted by governments worldwide.

There is a perception by some public interest groups and the media that FOI laws are sometimes applied in ways that limit access to information. If so, this would contradict the purpose of the Act.

The number of complaints, or requests for review of decisions, either to an agency or the Ombudsman, is sometimes cited as an indicator of FOI performance. While these may not be accurate reflections of the views held by the community, they are of some interest. All three agencies received some requests for review. The Ombudsman also examined a number of FOI decisions by the Ministry of Transport, and Department of Education and Training.¹ Overall, these reviews were few when compared to the total number of requests received.

This report highlights key issues in the FOI process and illustrates the range of challenges which agencies may face when handling FOI requests.

DET advised that it had reviewed its performance and is implementing a number of reforms to improve the effectiveness of the FOI process. These reforms have been developed in consultation with the NSW Ombudsman.

Premier's Department and MoT also advised that various processes have or will be changed to address the issues raised.

¹ The Ministry of Transport is the successor to the Department of Transport.

1.2 The audit

Audit scope

In this audit we examined a sample of FOI requests handled by three government agencies with very different responsibilities:

- Premier's Department (a central agency)
- Ministry of Transport (a policy-making and coordinating agency)
- Department of Education and Training (a service agency).

In total we looked at 84 FOI requests for non-personal information received in 2002. In order to test key provisions of the Act we focused on requests in which access to information was refused, granted in part, or subject to an internal review.

We chose to examine FOI requests for non-personal information because they were more likely to involve policy-related information and offer insight to government decision-making.

Most of the FOI requests we examined were made by media personnel or Members of Parliament.

Audit focus

We wanted to find out whether agencies complied with key objectives of the *FOI Act 1989* (the Act). In particular, we examined how agencies:

... facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.

Section 5(3)(b) of the Act

The audit focused on processes for handling requests; for example providing assistance to applicants, assessing costs, locating documents, response times and making decisions on access to information.

Further details of the audit sample and FOI process are provided in Appendix 1.

1.3 Acknowledgements

The Audit Office gratefully acknowledges the cooperation and assistance provided by representatives of the Ministry for Transport, Department of Education and Training, Premier's Department, and the Office of the NSW Ombudsman.

1.4 Cost of the audit

The audit cost \$165,384 which includes printing costs of around \$6,000.

1.5 Audit team

Ai-Binh Phu, Tiffany Blackett and Stephen Horne.

2. Do agencies comply with the spirit of the Act?

Do agencies comply with the spirit of the Act?

Section 5(3)(a) of the Act requires agencies to behave in a manner that furthers the objectives of the Act. This means they must apply FOI laws in a way that favours the disclosure of information.

The proportion of FOI requests received in 2002 for which information was released in full ranged from 26 to 31 per cent, as illustrated below. The proportion of requests for which information was released in part or refused was 28 to 55 per cent.

FOI requests received in 2002	DET	MoT	Premier's
Total number of requests	83	31	35
Released in full	26 (31%)	8 (26%)	10 (29%)
Released in part	16 (19%)	8 (26%)	7 (20%)
Refused (eg exempt document)	21 (25%)	9 (29%)	3 (8%)
No documents held	8 (10%)	3 (10%)	6 (17%)
Other (defer/wthdrwn/trnsfr)	4 (5%)	2 (6%)	6 (17%)
Not complete at the time of audit	8 (10%)	1 (3%)	3 (9%)

Source: Audit Office data request

Note: The audit examined files for 84 FOI requests which were received in 2002.

While the requirements of the Act favour disclosure, agencies have discretion to apply exemptions and other provisions as necessary. Staff dealing with FOI requests report that decisions on access, regardless of the outcome, are made in good faith.

To this end, we posed six questions which test key provisions of the Act:

1. do agencies help applicants with their requests?
2. are fees and charges kept to a minimum?
3. how thoroughly do agencies search for documents?
4. do agencies provide supporting reasons for their decisions?
5. do agencies meet the time requirements?
6. do agencies conduct reviews of decisions?

Key audit concerns

We found that the agencies we studied could provide only some assurance that they fully complied with key provisions of the Act.

It was notable that fees and charges had been kept to a minimum. No processing fees were requested in the majority of cases, and if charged, were not excessive.

In 12 per cent of the cases we examined, agencies clarified requests with applicants to ensure that the right documents were found. We could not determine whether assistance was provided to the applicant in the remaining matters, although vast majority were considered large in scope.

We also believe that agencies could do more to assist applicants in other ways. For example, provide more information on the FOI process prior to a decision being made, identify all relevant documents, and advise all applicants of their right to appeal in determination letters.

And although all had systems in place to handle FOI requests, there were a number of other factors which affected the timeliness and adequacy of the decision-making process.

Common problems included:

- processing fees being charged in some cases and not others even though a similar amount of work had been undertaken
- limited documentation on the extent of searching which had been undertaken to locate documents, making subsequent reviews more difficult
- supporting reasons for refusing access to information not always being provided to applicants
- no routine or formal analysis of reviews of decisions to determine whether changes in practice are required
- timeframes not being achieved.

The degree to which these issues apply to each agency is discussed in the following chapters.

Independent decision-making

In two agencies, proposed determinations were referred to the CEO before being finalised and sent to the applicant. This was standard practice in MoT, and occurred in about 25 per cent of the cases we reviewed in Premier's Department.

In DET records suggest that two draft determinations were discussed with the then Minister's Office before being finalised.

We have three concerns about the involvement of CEOs or Ministerial staff prior to a determination being made:

- it opens the possibility for perceptions of interference, even though this may not have been intended
- it may affect an agency's capacity to conduct an unbiased internal review, as it must be undertaken by someone who did not "deal with" the original application and who is not subordinate to the original decision-maker
- it presents efficiency issues, as agencies have tight timeframes to meet FOI requirements.

As part of finding out what documents exist or their exemption status it may be necessary to contact the office of the CEO or the Minister. This is not where our concern lies. We also recognise that it is appropriate for CEOs and Ministers to be informed of decisions. However, we believe this is best done at the same time the applicant is advised of the determination. This is an easily solved process issue but an important one in our view. It would resolve all of our concerns on this matter.

At least half of the officers we interviewed in DET and MoT reported that, at some stage, Ministerial staff or senior departmental officers sought to be involved in the review of determinations or participate in the decision-making process. Sometimes this was attributed to particular individuals who misunderstood or were unaware of the provisions of the Act. Others reported that the situation had improved due to an attitudinal change in management or a more centralised FOI process.

In a small number of the cases we examined, involvement of this nature affected the outcome of the determination.

The former CEO of the Ministry of Transport suggested that proposed determinations for two requests be revised or altered. Subsequently, one matter appeared to have lapsed and no determination was made. The other remained unchanged. In this case the CEO sought unsuccessfully to release more information than had been proposed. We discussed these cases with him, and he indicated that it was his policy not to interfere. However, he believed there were special circumstances and to ensure transparency his concerns were documented on file.

In DET, agency records suggest that one draft determination was altered following comments from staff of the then Minister.

**Role of
FOI staff**

FOI Coordinators play an important role in ensuring agencies comply with the spirit of the Act. They manage all the stakeholders in the process: the applicant, search unit, any third party, and the decision-maker (called the determination officer).

They also keep track of time limits and must be aware of the requirements of the Act, including any new judgments made by the courts or the NSW Ombudsman.

We believe FOI Coordinators and their staff are supportive of the objectives of the Act. A number of the issues raised above are caused by factors outside their immediate control, for example dealing with uncooperative or uninformed units elsewhere in the agency.

It is important that agencies ensure that all staff, not just those directly involved in handling requests, are aware of the purpose and key provisions of the Act. FOI Coordinators should be at a relatively senior level in the agency and have the authority to administer FOI arrangements as required.

Recommendations Agencies should:

- inform CEOs of the outcome of decisions in parallel with issuing the determination to applicants
- ensure that decisions on access to information are made independent of any undue influence
- ensure that all staff are aware of the purpose and key provisions of the Act
- ensure that staff involved in the FOI process have full authority to make decisions as required under the Act.

3. Do agencies help applicants with their requests?

Do agencies help applicants with their requests?

There are two key provisions in the Act which require agencies to assist applicants with their requests for information.

The first requires agencies to seek advice from applicants if they provide insufficient information about their request. This ensures agencies identify the correct documents. The second requires agencies to assist applicants to amend their application if the work involves a significant diversion of an agency's resources.

Seeking clarification

Of the 84 FOI requests we examined, we found 10 where agencies sought clarification from applicants about their request. The majority of these were very broad or multi-faceted applications. Agencies determined that it would involve considerable work to locate and retrieve documents, so applicants were given the opportunity to reduce or refine the scope of the request.

Case Study 1: Reducing the scope of FOI applications
<p>The Department of Education and Training received a request for information on violence in schools.</p> <p>The Department examined each part of the request, identified relevant documents and data sources, and provided an estimate of the time it would take search and retrieve the information. They estimated it would take a significant amount of time to process the request, as a lot of data had to be collected manually.</p> <p>The Department wrote to the applicant and advised that it could cost up to \$9000 to process the request and suggested the scope be reviewed.</p> <p>The applicant met with the Department and reduced the scope of the request significantly. The processing fees were then estimated to be \$300.</p>

Source: Audit Office file review

There were another four cases where agencies sought clarification in the final stages of the process. For example, agencies sought to clarify the request in the determination letter to the applicant, rather than prior to the decision being made.

Of the remaining 70 matters, a vast majority were considered large in scope, particularly those received by DET and MoT. Yet we could not determine whether assistance was provided to the applicant. We believe it may be beneficial for agencies to seek clarification in all matters they consider large or complex.

We recognise that agencies are under pressure to meet the time requirements of the Act. However they should clarify the request at the earliest opportunity. This prevents unnecessary searching, improves response times, and reduces the risk of inaccurate or misguided decisions being made.

The following case study shows what happens when clarification is sought too late in the process.

Case Study 2: Seeking clarification too late
<p>The Department of Education and Training received a request for information on demountable classrooms in schools.</p> <p>The relevant DET directorate provided advice to the FOI unit on most aspects of the request, however they did not understand the terminology used by the applicant in one section.</p> <p>Rather than seek clarification at this point, DET sought to clarify the terminology at the same time as it advised the applicant of the outcome of the other parts of the request.</p> <p>There was no response from the applicant and no decision made on this part of the request. DET advised the applicant that the matter was closed.</p>

Source: Audit Office file review

Advice on the FOI process

We also found that agencies could do more to assist applicants in other ways. This includes providing information on the FOI process prior to a decision being made, and advising them of the status of their request.

Applicants may have little knowledge of the FOI process, particularly timeframes or fees and charges that might apply. Yet none of the agencies we examined sent brochures or pamphlets on the FOI process to applicants when acknowledging receipt of their application.

Only one agency, MoT, provided information on timeframes and processing fees in the acknowledgement letter. We recognise that FOI officers may also receive general enquiries on FOI and provide oral advice to applicants prior to a request being made.

Premier's Department reported that pamphlets on FOI are now issued with acknowledgement letters.

Advice on FOI status

In a number of cases agencies provided advice on the status of a request. However the applicant, not the FOI Coordinator, often initiated this.

If there are delays in the process, agencies should always advise applicants of the status of their request. Good client relations principles dictate that this should occur as routine practice, rather than in response to applicant enquiries.

Agencies should also document all interactions with an applicant, including telephone conversions.

Recommendations Agencies should:

- clarify the scope of FOI requests at the earliest opportunity, particularly for large and complex applications
- provide applicants with information on the FOI process and the status of their request.

Public information on policy documents

The Act also requires agencies to publish information that will help applicants identify the correct documents sought. This includes:

- a Statement of Affairs - which details an agency's role and function
- a Summary of Affairs - which lists policy documents produced by an agency.

All three agencies we examined had processes in place to update and publish these documents. Relevant units within each agency were requested to review the list of policy documents.

DET is developing a policy database to be maintained by each directorate within the department. Premier's Department report that it now has an electronic means of updating these documents that will be disseminated sector wide as best practice.

Despite this, some FOI Coordinators reported that Summaries of Affairs were incomplete or inaccurate. For example, it listed policies that had been superseded or documents that were not policies at all. They also advised that considerable time was spent coordinating and chasing responses from other units within the department.

It is difficult to determine whether applicants use these documents. FOI coordinators reported that they had rarely received a request for a copy of a Summary of Affairs, nor had they sent one to an applicant.

Recommendation Any review of FOI legislation in NSW should consider the value of *Statements of Affairs* and *Summaries of Affairs*, and whether they serve their intended purpose.

4. Are fees and charges kept to a minimum?

Are fees and charges kept to a minimum?

Agencies are permitted to charge fees to help recover the cost of processing FOI applications. There are two fees:

- an application fee (which covers the cost of receiving the application and commencing processing)
- a processing fee (which covers the cost of searching and retrieving documents, and making determinations).²

Application fees An application fee was charged in all FOI requests we examined. Although it is non-refundable, we found at least two cases where the application fee was returned to the applicant. For example, MoT refunded the application fee when no documents were found that met the requirements of the request. The Premier's Department reported that it occasionally refunds application fees.

MoT also included the application fee towards the cost of processing. This meant that the applicant was not charged for the first hour of processing.

Processing fees Processing fees were requested in about one third of the applications we examined. FOI officers reported that the time taken to search for documents and prepare determinations was generally underestimated. The Premier's Department also advised that fees are charged as a last resort.

There were also cases where it was evident that much work had been undertaken, yet no processing fees were charged at all.

Case Study 3: Fees and charges
<p>The Department of Transport (now MoT) received a request for information on proposals to introduce congestion pricing in NSW.</p> <p>The Department identified two boxes of information on this topic and advised the applicant that an advance deposit of \$225 was required to process the application. This included five hours to locate and copy the information and 10 hours to read the documents, make a determination and prepare the necessary correspondence. A 50 per cent fee reduction was included in the total cost.</p> <p>In subsequent discussions the applicant advised that he was only interested in recent documents. The FOI Coordinator agreed that he could postpone paying the processing fee until the Department reviewed the information for documents produced in the last two years.</p> <p>The FOI Coordinator spent considerable time checking the documents and concluded that there were no documents produced during this period. The applicant was advised accordingly and no processing fees were paid.</p>

Source: Audit Office file review

² Fees and charges are specified in the *FOI (Fees and Charges) Order 1989*. The agencies we examined charged \$30 to apply for information, and \$30 per hour to process the request.

Applicants were always advised of any processing fees (if charged) and how they were calculated.

Inconsistent application of fees

Although fees were reasonable, they were not applied consistently across all applications, particularly those received by DET and MoT. It was difficult to determine why fees were charged in some cases and not others, even though it appeared that similar work had been undertaken. This could give rise to perceptions of favouritism or bias, even though decisions on fees were made in good faith.

We found that approaches varied according to the officer handling the request. Although there were guidelines in place specifying when to apply processing fees, they were not always followed. They also differed across the three agencies.

The table below illustrates the extent and range of fees charged in each agency.

	DET	MoT	Premier's
Total requests examined	31	25	28
No. of processing fees requested	8	14	3
No. of fees paid	3	7	2
Total fee range	\$120 - \$3,900	\$30 - \$660	\$390 - \$1,440
Fee range of those paid	\$300 - \$800	\$30 - \$510	\$390 - \$1,380
Guidelines specifying when processing fees should be charged	> 5 hrs to process a request	-	> 10 hrs to process a request

Source: Audit Office file review

Fee range

As shown above, fees requested by agencies ranged from \$30 to \$3,900. Apart from two relatively high DET requests, there was no obvious correlation between the scale of fees and whether they were paid.

However, in at least three DET cases, processing fees were requested when applicants were advised of the determination for a large multi-faceted request. All went unpaid and the matter was closed. It is not common practice for agencies to follow-up payment.

Recommendation Agencies should ensure that fees and charges are applied consistently.

5. How thoroughly do agencies search for documents?

How thoroughly do agencies search for documents?

Extent of searching

All three agencies had processes in place to search and locate documents. In most cases, a memorandum or e-mail was sent to relevant units within each agency requesting that the documents, if held, be forwarded to the FOI Coordinator for review.

There was little evidence on file of the type of searches undertaken by agencies. Only two cases contained evidence of database searches.

One fifth of the matters we examined contained no evidence of a response from other units at all, even though agency policy required this. A determination was made in all of these cases.

At least eight matters also had to be referred to another unit. Two agencies, Premier's Department and DET, currently refer FOI requests to all units, to increase the likelihood that all relevant documents are found.

Documentation

Some requests for information involve considerable search time. An agency may have to review numerous files and databases to find the correct documents. Other requests are for one or two easily identifiable documents.

We found that there was limited documentation on the type of searches for both straightforward requests and more complex extensive requests. Even when agency staff reported that no documents had been found, the extent of searching was not evident. This could raise queries about the thoroughness of searches undertaken by agencies, even though efforts may have been made to locate documents. This may also hamper any subsequent reviews of determinations.

The following case study illustrates how an inadequate search can result in more work in the long term, in this case, an internal review.

Case Study 4: Searching for documents

The Department of Education and Training received a request for an internal review of an FOI determination. The original decision granted partial access to the information requested; six documents were provided, another was considered exempt.

The applicant believed that the information she had received indicated that DET held other documents which met the scope of her application.

A senior executive officer conducted the internal review. The matter was discussed with the FOI Unit and the original decision-maker. Five additional documents were identified which met the scope of the request. Access was granted to all.

The applicant was advised that the documents were not provided initially because the officer with the most knowledge of the request was on leave at the time. While this may be the case, it casts doubt on the effectiveness of the Department's information management systems.

Source: Audit Office file review

Advice from search unit

While there was little evidence of the extent of searching undertaken by agencies, the search unit provided the FOI Coordinator with advice or further information on the documents in more than 40 per cent of the requests we examined. This included advice on:

- access to the document
- data interpretation
- referral to other units or third parties
- clarification of the request.

Recommendations Agencies should:

- conduct thorough and complete searches for documents
- document the types of searches undertaken to locate information
- ensure that adequate records management systems are in place to facilitate document searches.

**6. Do agencies provide supporting reasons
for their decisions?**

Do agencies provide supporting reasons for their decisions?

FOI determinations

When all relevant documents have been located, a decision is made on their release. This is called a making a determination.

In the agencies we examined the FOI Coordinator reviewed the documents and drafted a letter to the applicant advising of the outcome of their request (ie the determination).

We found no documented evidence of the decision-making process in at least half the matters we examined. This made it difficult for us to determine whether the reasons for decisions had been deliberated and all viewpoints properly considered.

In the remaining cases the proposed decision was outlined in a memorandum to the determination officer or the chief executive. In a number of these cases, particularly in MoT, the reasons for a decision were not discussed. The memorandum simply repeated or referred to the decision that had been drafted in the letter to the applicant.

The Premier's Department advised that it has modified procedures to address this.

Quality of determinations

The quality of the letters advising applicants of the outcome of their request varied considerably. For example:

- supporting reasons for refusing access to information were not always provided
- documents were not always identified to the applicant
- appeal mechanisms were not always included.

In five cases the applicant was not informed of the final outcome of the matter at all.

Supporting reasons

An agency cannot simply assert that a particular exemption applies to a document. It must also demonstrate how it applies.

Supporting reasons were provided in only about half of matters in which exemptions were used to refuse access to all or part of a document.

The exemptions which agencies found most difficult to explain related to Cabinet documents and internal working documents. Another problem related to public interest considerations which must be applied when using some exemptions. The public interest considerations were often insufficiently explained or omitted completely.

Case Study 5: Reasons for refusing access to information

Cabinet documents

The Premier's Department received a request for any audit reports it had produced on Ministerial Offices since 1999. The Department advised the applicant that the documents requested were exempt, as they had been prepared for a submission to Cabinet. No other information was provided other than a quotation from the relevant section of the Act. The Department did not identify the documents or say which Cabinet committee they were prepared for.

Internal working documents and the public interest

DET received a request for information on the results of school 'quality of life surveys'. The Department advised the applicant that two parliamentary updates were exempt under the Act. No other information was provided other than a quote from the Act on internal working documents. They did not explain what 'parliamentary updates' were, what sort of information they contained or what decisions they related to.

The Department advised that it would be against the public interest because it would "impede full and frank advice to the responsible Minister". No further explanation is provided. The Department did not explain why its release would prevent frank advice in the future.

Source: Audit Office file review

It is important that agencies explain how the public interest has been assessed. Similarly, in cases where a document may have an adverse affect on the affairs of an agency or third party, they should also say why this is the case.

Agencies are not required to provide supporting reasons when they have not found any documents relevant to a request. However we found that some agencies provided more information in these cases, for example outlining the searches undertaken or providing other information which may be of use.

Identifying documents to applicants

Sometimes it was difficult for us to understand whether access to information had been granted or not. Determinations, particularly for large complex requests, were quite confusing. And we could not always work out which documents had been identified.

Agencies had different approaches in this regard. MoT provided a list of all documents relating to the request and made a determination on each.

Although the number of documents was sometimes disclosed, Premier's Department and DET did not always identify all documents relevant to a request.

If an agency refuses access to a document it must provide reasons. To do this, all relevant documents must first be identified to the applicant.

Right of review We could not easily determine whether all applicants were informed of their right of review. While it was recognised that the Act is quite clear on this issue, it caused a problem for some agencies.

Unless processing fees are charged, agencies are not required to provide information on appeal mechanisms if they have no documents or full access is granted. Yet they still received, and sometimes conducted, requests for internal reviews of these matters.

We found that determination letters did not refer to appeal mechanisms in almost one third of the cases we examined.³ Of these, about 30 per cent were determined that access to documents be partially granted or refused.

	DET	MoT	Premier's
No. of requests examined	31	25	28
No. of determination letters which did not refer to appeal mechanisms	5	12	8
No. refused/granted in part	1	3	3

Source: Audit Office file review

It is necessary to distinguish between the right of appeal against the process, and the right of appeal against the decision to refuse or defer access.

The first can only be reviewed by the NSW Ombudsman. For example, an applicant who was granted full access or told that there were no documents may believe that others exist. The inference is that the search was inadequate or the agency is deliberately withholding information.

The latter is subject to review by both the agency and the NSW Ombudsman. To avoid confusion, agencies should advise all applicants of their right of review, regardless of the outcome of the determination. The Premier's Department advised that it had recently modified procedures to address this issue.

Recommendations Agencies should:

- document the decision-making process, including all deliberations and viewpoints considered
- provide supporting reasons for refusing access to information
- identify all relevant documents to the applicant
- advise all applicants of their right to appeal.

³ Agencies may include pamphlets on appeals mechanisms with the determination, however this alone may not address the requirements regarding information on right of review.

7. Do agencies meet the time requirements?

Do agencies meet the time requirements?

Time requirements

Agencies have 21 days to determine FOI applications. This is taken to be from the date of receipt to the date the notification letter is sent to the applicant. This is extended by 14 days if an agency has to consult with another person or body about the information requested. The clock also stops if an advance deposit is requested to cover the cost of processing.

The time limit was originally 45 days. In 1992 the Act was amended to reduce this to 21 days. This is the shortest time requirement within any jurisdiction in Australia.

We found that agencies were unable to meet the time requirements in almost three-quarters of the matters we examined. Of these, more than 30 per cent were more than one month overdue.

DET struggled the most with timeframes, being unable to meet the deadline in 81 per cent of the requests we examined. MoT and Premier's Department were unable to meet time requirements in 76 per cent and 61 per cent of cases respectively.

The majority of officers we spoke to thought that the time requirements were extremely difficult to meet. DET in particular indicated that its size, with over 40 directorates and thousands of employees, was a key factor affecting response times. DET received 229 FOI requests in 2002. MoT and Premier's Department received 40 and 37 respectively.

Reasons for delays

Other factors we identified which delayed the process included:

- consulting with the applicant
- slow or no response from the search unit
- searching for documents particularly for broad or multi-faceted requests
- having to extract information from multiple sources
- waiting for the chief executive to approve determinations
- other work priorities.

Search unit

In all agencies, staff searching for documents were asked to forward them to the FOI unit by a specific date to ensure timeframes were met. Yet the search unit was unable to meet the time limit in over 40 per cent of the requests we examined. And this does not include cases where there was no response at all.

Case Study 6: Delays in searching for documents

The Department of Education and Training received a request for information on permanent teacher appointments.

The request was referred to the relevant directorate who advised that extracting the information from DET's system would be "an unreasonable diversion of resources away from the core business of staffing schools and recruiting high quality teachers".

The FOI Coordinator asked them to explain why they considered it a diversion of resources. Specifically, what resources might be involved in extracting the information and whether some parts of the request might be easier to obtain.

Although the FOI Coordinator sent at least two follow-up e-mails, no response was received. The matter lapsed and the applicant was not advised of the outcome of his request.

An internal review of this matter determined that access to the majority of this information be provided. The internal reviewer initially experienced similar delays. However relevant data was eventually provided to the FOI Unit in a matter of days, including information that the directorate previously advised was not available. The application fee was refunded.

Source: Audit Office file review

Officers reported that there is a conflict between the timeliness of response and accuracy of information. They would often prefer to ensure that the information is accurate, particularly in large complex requests, than cut corners to meet a deadline.

Case Study 7: Managing large FOI requests

In August 2002, the Premier's Department received a request for information regarding a development proposal in regional NSW. The information sought included all correspondence, reports, public submissions, e-mails, and briefing notes held by the Department.

Staff advised the FOI Coordinator that there were at least 80 to 100 documents relevant to the request. An advance deposit was requested to cover the cost of processing.

Given the size of the request the Department split the request into several parts, based on whether the documents required consultation with third parties. Two determinations were provided, one in October 2002, another in January 2003.

Source: Audit Office file review

FOI staff reported that in most cases, applicants are not as anxious about timeframes provided they know that their request is being dealt with, and are advised of the status on a regular basis.

Large or multifaceted requests

Many FOI requests were not seeking specific documents at all. Some applicants requested access to all information on a particular topic. Others asked a series of questions they wanted answered. For example:

"... the number of short and long suspensions, yearly and for each term for 1999, 2000, 2001 for each category of suspension ..."

"... the amount of commission (if any) retained by the Chief Commissioner of State Revenue in 1999/2000, 2000/2001 and 2001/2002 under section 10(3) of the Parking Space Levy Act 1992 ..."

"... all documents held by the Department, including correspondence, reports, suggestions, recommendations, briefing notes, and computer records, whether final, initial or interim, reviewing the traffic and transport arrangements for Sydney's Central Business District ..."

Such requests are large, complex and multi-faceted and would require considerable time searching and retrieving documents.

Document creation and data interpretation

If information is not in the form of a written document, agencies can create a document using means for retrieving or collating information, such as databases.

Some requests could clearly be obtained from existing databases. Others however were less obvious and required significant data manipulation or interpretation, particularly when parameters or definitions had changed.

Case Study 8: Data interpretation
<p>The Department of Education and Training received a request for statistics on student preferences for selective schools.</p> <p>The directorate responsible for this information indicated that the data was complex and required contextual explanation to avoid invalid comparisons about individual schools. They were also concerned about protecting the privacy of individual students.</p> <p>As a result, DET met with the applicant to provide the relevant documents and allow a contextual briefing to be provided.</p>

Source: Audit Office file review

Some staff viewed these types of requests as research or a fishing expedition. Others indicated that it was not information that they would necessarily prepare themselves or use for operational purposes.

While this may be the case, agencies generally processed and dealt with each request, even if it meant extensive searches or data preparation.

**Measuring
response times**

DET measured response times from the date the request was received by the FOI Unit, rather than the agency mailroom. This means that response times are slightly longer than reported as staff indicated that it could take several days for mail to reach the FOI Unit.

Recommendations Agencies should ensure that all staff are aware of, and observe, the time requirements of the Act.

Any review of FOI legislation in NSW should consider extending timeframes when consulting the applicant or handling large multi-faceted requests.

8. Do agencies conduct reviews of decisions?

Do agencies conduct reviews of decisions?

An applicant who disagrees with the determination made by an agency can apply for an internal review. Internal reviews must be undertaken by someone other than, and more senior to, the original decision maker.

Internal reviews Each agency had a process in place to conduct internal reviews of determinations. Staff responsible for conducting reviews in each agency were:

- Director-General (Premier's Department)
- Executive Director, Finance and Corporate Services (MoT)
- Senior executive officers (DET).

In 2002, DET and MoT conducted 11 and three internal reviews respectively for non-personal requests. The Premier's Department was not required to conduct any internal reviews during this period.

A new decision New determinations were made in all matters we examined. An explanation of the reasons for a decision was provided in all cases.

Of the nine reviews we examined, one was conducted by the original decision-maker. This was an unusual case in which the applicant sought a second determination, rather than an internal review.

Case Study 9: An objective assessment?
<p>The Department of Transport received a request for an internal review of an FOI determination. The applicant paid the required fee but did not want to exercise his right to internal review immediately, but sought a new decision on one document in particular.</p> <p>DoT discussed the request with the applicant. He agreed to withdraw his application for internal review. Instead DoT would reconsider the determination regarding the one document. The internal review fee was not refunded, but used to cover the cost of the new determination.</p> <p>The FOI Officer reviewed the document again and consulted with relevant third parties. The original decision, to refuse access, was upheld. The applicant was advised of the outcome and his right to internal review.</p>

Source: Audit Office file review

In this example, the agency accommodated the applicant's request even though it was not provided for in the Act. This approach was taken in good faith and the applicant's right to internal review was not lost. Yet practices that are not covered by the legislation may give rise to unanticipated problems.

Although the applicant requested this approach, we believe the matter should have been referred to another officer. This ensures that an objective and impartial assessment is undertaken.

Timeframes Agencies have 14 days to conduct internal reviews. In almost 80 per cent of the cases we examined agencies were unable to meet the deadline. They were anywhere from six days to almost three months overdue.

In some cases, there were significant delays before the matter was referred to the person nominated to conduct the review.

Case Study 10: Delays in the review process
<p>The Department of Education and Training received an application for an internal review of an FOI decision. The request was referred to a senior executive officer for review.</p> <p>This person declined to do the review on the basis that it was not a requirement under the Act for someone at that level to conduct internal reviews. The FOI Coordinator reiterated that the Act only requires that the internal reviewer be more senior to the original decision-maker. DET procedures also specified that internal reviews be conducted by senior executive officers.</p> <p>This person still refused to conduct the review, and the matter was eventually referred to another senior executive officer. This delayed the process almost four weeks.</p>

Source: Audit Office file review

DET does not have a formal system for selecting senior officers to conduct reviews and could benefit from introducing a roster. It is also important that staff responsible for reviews are mindful of and observe the requirements for internal reviews.

Review of findings None of the agencies we examined conducted formal or routine analysis of the outcomes of internal reviews.

For example, this may include an examination of determinations, including the original decision, to determine whether changes in practice are required. Such reviews should be documented and submitted to management for their consideration.

External reviews Applicants may also request their determinations be reviewed by the NSW Ombudsman, the Administrative Decisions Tribunal or by a court of law.

Neither MoT nor DET have formal systems in place to analyse findings from the Ombudsman's or court reviews. However processes have changed in DET as a result of an Ombudsman's enquiry. This includes changes to search processes, and more emphasis on record keeping and response times.

The Premier's Department reviews every court decision on FOI determinations. Any issues of significance are highlighted and reported to the Director-General.

Oversight body There is no review mechanism which routinely oversees FOI arrangements in NSW government agencies.

In 1994 and 1997 Premier's Department and the NSW Ombudsman prepared guidelines to help agencies deal with FOI applications. They are currently working on a joint FOI publication, although it has not yet been finalised.

The Premier's Department also sponsors an FOI practitioners network and runs a telephone hotline to provide guidance to agencies and the general public on FOI. The NSW Ombudsman can review determinations and complaints about the FOI process.

Each Minister's Office is also required to report all contentious FOI requests considered by each agency to the Premier's Department. This includes FOI applications from Members of Parliament and media outlets.

There is currently no mechanism which:

- collates statewide data on all FOI decisions
- audits administrative arrangements in agencies
- disseminates information on court decisions and findings from Ombudsman inquiries.

Such a mechanism would make it easier to test the effectiveness of FOI legislation. It would also provide Parliament with current performance information and increase the likelihood that agencies are complying with key provisions of the Act.

Recommendations Agencies should:

- ensure internal reviews are conducted by someone other than, and more senior to, the original decision maker, as required by the Act
- introduce formal systems for reviewing the outcomes of internal and external reviews of FOI determinations.

The Government should consider introducing a mechanism which routinely oversees FOI arrangements in NSW government agencies.

Appendix

Appendix 1 Audit sample and the FOI process

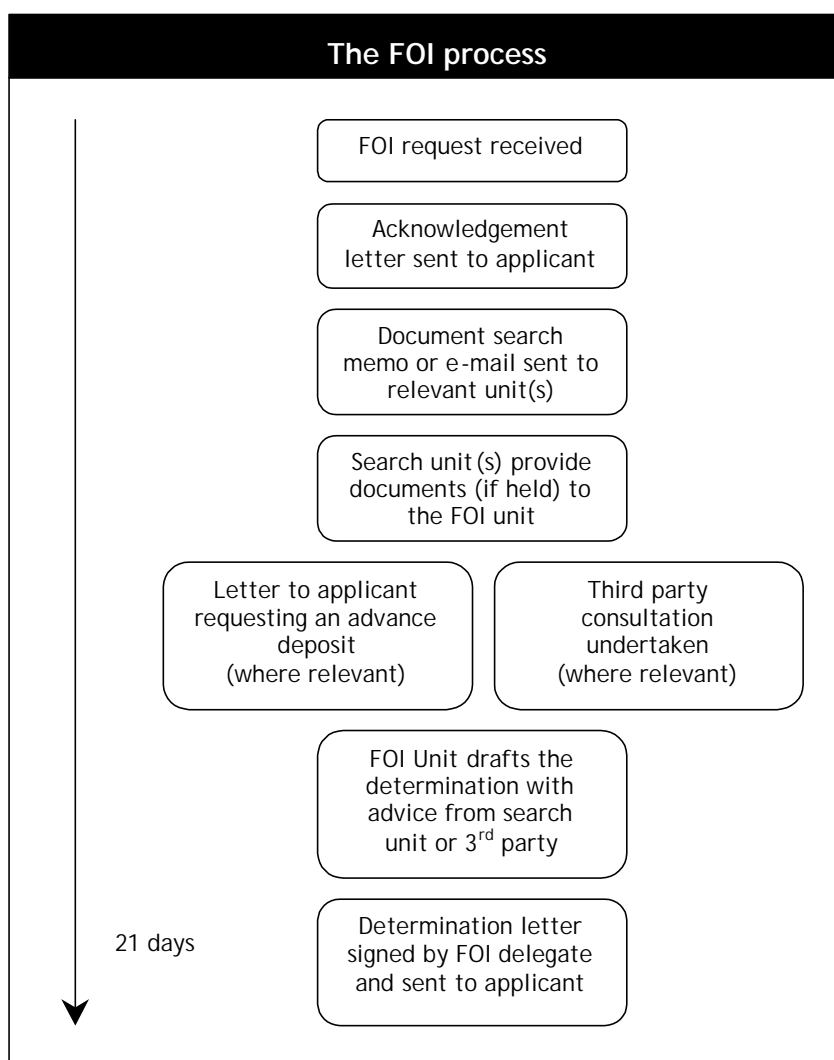
Agency	No. of FOI requests received in 2002	No. of non-personal matters	No. of FOI requests audited
Ministry of Transport	40	31	25
Premier's Department	37	35	28
Department of Education and Training	229	83	31
Total	306	149	84

Source: Audit Office information request

Note

The audit focused on requests for non-personal information which were refused, granted in part, or subject to an internal review.

The diagram below illustrates the keys steps in the FOI process.



Note: The timeframe is extended by 14 days if a third party is consulted or an advance deposit is requested.

Performance Audits by the Audit Office of New South Wales

Performance Auditing

What are performance audits?

Performance audits are reviews designed to determine how efficiently and effectively an agency is carrying out its functions.

Performance audits may review a government program, all or part of a government agency or consider particular issues which affect the whole public sector.

Where appropriate, performance audits make recommendations for improvements relating to those functions.

Why do we conduct performance audits?

Performance audits provide independent assurance to Parliament and the public that government funds are being spent efficiently and effectively, and in accordance with the law.

They seek to improve the efficiency and effectiveness of government agencies and ensure that the community receives value for money from government services.

Performance audits also assist the accountability process by holding agencies accountable for their performance.

What is the legislative basis for Performance Audits?

The legislative basis for performance audits is contained within the *Public Finance and Audit Act 1983, Part 3 Division 2A*, (the Act) which differentiates such work from the Office's financial statements audit function.

Performance audits are not entitled to question the merits of policy objectives of the Government.

Who conducts performance audits?

Performance audits are conducted by specialist performance auditors who are drawn from a wide range of professional disciplines.

How do we choose our topics?

Topics for a performance audits are chosen from a variety of sources including:

- our own research on emerging issues
- suggestions from Parliamentarians, agency Chief Executive Officers (CEO) and members of the public
- complaints about waste of public money
- referrals from Parliament.

Each potential audit topic is considered and evaluated in terms of possible benefits including cost savings, impact and improvements in public administration.

The Audit Office has no jurisdiction over local government and cannot review issues relating to council activities.

If you wish to find out what performance audits are currently in progress just visit our website at www.audit@nsw.gov.au.

How do we conduct performance audits?

Performance audits are conducted in compliance with relevant Australian standards for performance auditing and operate under a quality management system certified under international quality standard ISO 9001.

Our policy is to conduct these audits on a "no surprise" basis.

Operational managers, and where necessary executive officers, are informed of the progress with the audit on a continuous basis.

What are the phases in performance auditing?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team will develop audit criteria and define the audit field work.

At the completion of field work an exit interview is held with agency management to discuss all significant matters arising out of the audit. The basis for the exit interview is generally a draft performance audit report.

The exit interview serves to ensure that facts presented in the report are accurate and that recommendations are appropriate. Following the exit interview, a formal draft report is provided to the CEO for comment. The relevant Minister is also provided with a copy of the draft report. The final report, which is tabled in Parliament, includes any comment made by the CEO on the conclusion and the recommendations of the audit.

Depending on the scope of an audit, performance audits can take from several months to a year to complete.

Copies of our performance audit reports can be obtained from our website or by contacting our publications unit.

How do we measure an agency's performance?

During the planning stage of an audit the team develops the audit criteria. These are standards of performance against which an agency is assessed. Criteria may be based on government targets or benchmarks, comparative data, published guidelines, agencies corporate objectives or examples of best practice.

Performance audits look at:

- processes
- results
- costs
- due process and accountability.

Do we check to see if recommendations have been implemented?

Every few years we conduct a follow-up audit of past performance audit reports. These follow-up audits look at the extent to which recommendations have been implemented and whether problems have been addressed.

The Public Accounts Committee (PAC) may also conduct reviews or hold inquiries into matters raised in performance audit reports.

Agencies are also required to report actions taken against each recommendation in their annual report.

To assist agencies to monitor and report on the implementation of recommendations, the Audit Office has prepared a Guide for that purpose. The Guide, *Monitoring and Reporting on Performance Audits Recommendations*, is on the Internet at www.audit.nsw.gov.au/guides-bp/bpglist.htm

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards. This includes ongoing independent certification of our ISO 9001 quality management system.

The PAC is also responsible for overseeing the activities of the Audit Office and conducts reviews of our operations every three years.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament and from internal sources.

For further information relating to performance auditing contact:

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Performance Audit Reports

No.	Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
64*	Key Performance Indicators	<i>Government-wide Framework Defining and Measuring Performance (Better practice Principles) Legal Aid Commission Case Study</i>	31 August 1999
65	Attorney General's Department	<i>Management of Court Waiting Times</i>	3 September 1999
66	Office of the Protective Commissioner Office of the Public Guardian	<i>Complaints and Review Processes</i>	28 September 1999
67	University of Western Sydney	<i>Administrative Arrangements</i>	17 November 1999
68	NSW Police Service	<i>Enforcement of Street Parking</i>	24 November 1999
69	Roads and Traffic Authority of NSW	<i>Planning for Road Maintenance</i>	1 December 1999
70	NSW Police Service	<i>Staff Rostering, Tasking and Allocation</i>	31 January 2000
71*	Academics' Paid Outside Work	<i>Administrative Procedures Protection of Intellectual Property Minimum Standard Checklists Better Practice Examples</i>	7 February 2000
72	Hospital Emergency Departments	<i>Delivering Services to Patients</i>	15 March 2000
73	Department of Education and Training	<i>Using Computers in Schools for Teaching and Learning</i>	7 June 2000
74	Ageing and Disability Department	<i>Group Homes for people with disabilities in NSW</i>	27 June 2000
75	NSW Department of Transport	<i>Management of Road Passenger Transport Regulation</i>	6 September 2000
76	Judging Performance from Annual Reports	<i>Review of Eight Agencies' Annual Reports</i>	29 November 2000
77*	Reporting Performance	<i>Better Practice Guide A guide to preparing performance information for annual reports</i>	29 November 2000
78	State Rail Authority (CityRail) State Transit Authority	<i>Fare Evasion on Public Transport</i>	6 December 2000
79	TAFE NSW	<i>Review of Administration</i>	6 February 2001
80	Ambulance Service of New South Wales	<i>Readiness to Respond</i>	7 March 2001
81	Department of Housing	<i>Maintenance of Public Housing</i>	11 April 2001

No.	Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
82	Environment Protection Authority	<i>Controlling and Reducing Pollution from Industry</i>	18 April 2001
83	Department of Corrective Services	<i>NSW Correctional Industries</i>	13 June 2001
84	Follow-up of Performance Audits	<i>Police Response to Calls for Assistance The Levying and Collection of Land Tax Coordination of Bushfire Fighting Activities</i>	20 June 2001
85*	Internal Financial Reporting	<i>Internal Financial Reporting including a Better Practice Guide</i>	27 June 2001
86	Follow-up of Performance Audits	<i>The School Accountability and Improvement Model (May 1999) The Management of Court Waiting Times (September 1999)</i>	14 September 2001
87	E-government	<i>Use of the Internet and Related Technologies to Improve Public Sector Performance</i>	19 September 2001
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100	NSW Police Department of Corrective Services	<i>Managing Sick Leave</i>	23 July 2002

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102	E-government	<i>Electronic Procurement of Hospital Supplies</i>	25 September 2002
103	NSW Public Sector	<i>Outsourcing Information Technology</i>	23 October 2002
104	Ministry for the Arts Department of Community Services Department of Sport and Recreation	<i>Managing Grants</i>	4 December 2002
105	Department of Health Including Area Health Services and Hospitals	<i>Managing Hospital Waste</i>	10 December 2002
106	State Rail Authority	<i>CityRail Passenger Security</i>	12 February 2003
107	NSW Agriculture	<i>Implementing the Ovine Johne's Disease Program</i>	26 February 2003
108	Department of Sustainable Natural Resources Environment Protection Authority	<i>Protecting Our Rivers</i>	7 May 2003
109	Department of Education and Training	<i>Managing Teacher Performance</i>	14 May 2003
110	NSW Police	<i>The Police Assistance Line</i>	5 June 2003
111	E-Government	<i>Roads and Traffic Authority Delivering Services Online</i>	11 June 2003
112	State Rail Authority	<i>The Millennium Train Project</i>	17 June 2003
113	Sydney Water Corporation	<i>Northside Storage Tunnel Project</i>	24 July 2003
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