

information and access

FREEDOM OF INFORMATION

Complaints about the actions of agencies

Section 53(3) of the *Freedom of Information Act 1989* (ACT) (the FOI Act) requires the Ombudsman to report on complaints about the handling of freedom of information (FOI) requests by ACT Government agencies.

This year, we received 15 complaints, involving nine agencies, in which the handling of requests made under FOI provisions was raised as an issue. These complaints mostly related to concern about delays in providing documents and/or reasons for exemption. Frequently the focus of our intervention is to have the agency expedite a response.

Freedom of information requests to the Ombudsman

In 2004–05, we received seven FOI requests under section 15 of the FOI Act. The Act mandates a 30-day period for the processing of FOI requests, subject to certain exceptions and extensions. Three FOI requests were processed within this period, with the remainder being processed outside that timeframe after obtaining the consent of the applicants concerned.

Following requests by the applicants, we conducted internal reviews of two of the decisions. There were no applications for review of decisions made to the Administrative Appeals Tribunal. The cost of dealing with the requests was substantial but so dispersed throughout the office that reliable calculation is not feasible. During the period, no fees or charges were imposed on the applicants in relation to either the primary FOI decisions, or the internal review of those decisions.

The Ombudsman has been considering whether much would be lost if the office, like some of its State counterparts, was excluded from the FOI Act for documents relating to its investigative functions.

PUBLIC INTEREST DISCLOSURE

The Public Interest Disclosure Act 1994 (ACT) (the PID Act) provides that a person may make a Public Interest Disclosure (PID), including to the Ombudsman. Complaints of this nature are usually sensitive and often complex, and their investigation requires a great deal of care.

One area of difficulty is where the person making the disclosure is employed by the agency about which they are complaining. The facts that can bring a matter under the PID Act can be intertwined with other events that have contributed to a disagreement or dispute between the person and the government agency.

It can be difficult to separate the PID issues from other events, particularly if there is a complaint of unlawful recrimination attributable to a PID Act disclosure. It is common for the PID issue to emerge (or to be notified formally) some time after the disagreement or dispute has arisen.

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The PID Act is an important element in the framework of democratic, ethical and accountable government in the ACT. The Ombudsman’s role under the PID Act is one that is taken seriously.

Since the PID Act has been in place, the Ombudsman has received on average one disclosure a year. However, there was a significant increase in 2003–04 when six disclosures were received about five agencies. This trend continued in 2004–05, when we received four disclosures about four agencies, as outlined below.

- In April 2005, we received a request from a complainant asking the Ombudsman to

investigate his PID because he had made the disclosures five months earlier to the agency that he had been employed by, and the agency still had not responded to him.

- In May 2005, the ACT Commissioner for Public Administration referred two complaints for our consideration. As serious allegations were made against the departments for which the individuals worked, the Commissioner felt that it was more appropriate for the Ombudsman to investigate the disclosures.
- The remaining PID was from a complainant who raised issues about an agency that had recently terminated his employment.

The office is continuing to investigate each of these matters, along with three PIDs that were received in 2003–04.

During the year, the office of the Commonwealth Ombudsman committed to collaborating in a three-year national research project into the management and protection of internal witnesses (or ‘whistleblowers’) in the Australian public sector. The project is being led by Griffith University and involves five other universities and 14 industry partners from the Commonwealth, State and Territory public sectors.

We are contributing considerable resources to the project, including the participation of senior staff on the project steering committee, a part-time staff

member to work on the project, and a one-off cash contribution of \$15,000.

Protecting whistleblowers and other internal witnesses to corruption, misconduct and maladministration is an ongoing challenge in public sector governance. The project will build on previous Australian and international research to assemble a more up-to-date and representative picture of how whistleblowing and related PIDs are being and should be managed.

TERRITORY RECORDS

In accordance with the *Territory Records Act 2002* (ACT) the ACT Ombudsman’s office ensures that:

- all ACT Ombudsman records are stored appropriately and securely
- relevant position profiles and duty statements reflect the records management skills required by the Ombudsman’s office
- training is available for records management and general staff in record-keeping skills and responsibilities
- a controlled language system for the Ombudsman’s office has been developed and is used by staff
- the Ombudsman’s approved Records Disposal Schedule is implemented and monitored appropriately.