Ombudsman SA
Annual Report
2009/2010

OmbudsmanSA

The Honourable President
LEGISLATIVE COUNCIL
Parliament House
Adelaide

The Honourable Speaker
HOUSE OF ASSEMBLY
Parliament House
Adelaide

It is my duty and privilege to submit the South Australian Ombudsman's 38th Annual Report for 2009-10 to the Parliament, as required by section 29(1) of the *Ombudsman Act 1972*.

Richard Bingham
OMBUDSMAN

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2009-10 has been a busy and rewarding year for Ombudsman SA.

Highlights

Workload

2009-10 has been a busy and rewarding year for Ombudsman SA. In particular:

- We received 8 834 approaches from members of the public. 5 635 (approximately 64 per cent) were dealt with by the provision of advice or referral to a more appropriate body.
- From those approaches we considered 3 199 matters in total - 2 982 Ombudsman complaints and 217 FOI matters. This compares to the 2 543 matters considered in 2008-09, made up of 2 322 Ombudsman complaints and 221 FOI matters.

Overall this represents a 25 per cent increase in matter numbers over the previous year. Complaints about Government departments increased by 37 per cent, those about local government by 10 per cent, and those about other authorities by 65 per cent.

- In December 2009, we received a reference from the Legislative Council to undertake a major investigation into issues affecting the City of Charles Sturt.

These workload demands have been met from within our existing budget allocation of $1.8 million, as described in Appendix 1. As a result the office has been working under some pressure, and I record my thanks to staff of the office for their efforts.

Review of Integrity Structures

On 5 May 2010, the Attorney General, Hon John Rau MP, made a Ministerial Statement to Parliament in which he foreshadowed a review of the organisations which comprise South Australia's public integrity system. My office is one of those organisations, and I made a submission to the review.

I welcome the opportunity to reassess the linkages and relationships between the public integrity bodies in this State, and to consider some legislative and other initiatives which would assist effective integrity oversight. I await the results of the review with interest.

Complaints about health registration bodies

At the end of 2009-10, Ombudsman SA lost jurisdiction over a number of medical professional registration bodies which ceased to exist when the Australian Health Professional Regulation Authority (**AHPRA**) came into existence under the national registration scheme agreed by the Council of Australian Governments.

Under the scheme, complaints which are not resolved by AHPRA may be made to the National Health Practitioner Ombudsman. The NHP Ombudsman was created as an independent entity, working under the Commonwealth *Ombudsman Act 1976*, as amended by the Health Practitioner Regulation National Law Regulation 2010 for the purposes of the scheme.

Based on recent years' experience, this change will result in approximately 50 fewer complaints per annum to Ombudsman SA.

Ombudsman Investigations

Section 22 confidentiality provision

I observed in my Annual Report last year that the confidentiality provision in section 22(1) of the Ombudsman Act prevents me from informing the Parliament or relevant authorities about a complaint, unless and until a report is published.

Over the past year this has proven to be a real impediment to my work, as it prevents me from providing information to others who have a legitimate and reasonable interest in an investigation.

In my view it would be appropriate to modify the confidentiality provision to provide a general discretion to the Ombudsman to inform others in the public interest about a complaint which does not proceed to a formal report. I am hopeful that this issue can be addressed through the Attorney General's review of public integrity structures.

City of Charles Sturt - Parliamentary referral

A substantial part of my office's investigative workload over the past year has involved the Legislative Council reference regarding the City of Charles Sturt. My office made good progress with the investigation, with the vast majority of necessary

Publication of FOI determinations is now a regular part of our work.

information having been collected and most witnesses having been interviewed.

However, on 16 June 2010 I agreed to suspend the investigation, pending the resolution of Supreme Court action by the City of Charles Sturt. The action challenged my jurisdiction to conduct the investigation on a number of bases, and alleged that I had exceeded my jurisdiction by not permitting elected members of the council to be legally represented at their interviews.

At the time of writing the matter remains before the Court, with mediation intended to be conducted. The investigation will be the subject of a separate report to the Legislative Council in due course.

Public interest disclosures

As a potential recipient of public interest disclosures under the *Whistleblowers Protection Act 1993*, I have an obligation to refer them to the Anti-Corruption Branch of SA Police if they may involve fraud or corruption. [1]

Over the past year Ombudsman SA has tended to refer more complaints to the ACB than in the past. It is not uncommon for the ACB to respond - quite properly - that whilst a disclosure may meet the definition under the Act of 'public interest information' that relates to fraud or corruption, it could not amount to criminal conduct and thus is not something that the ACB could investigate under its Ministerial Direction.

However, the fact that my office might believe that a complaint would not amount to criminal conduct does not affect our obligation to refer it to the ACB.

Freedom of Information

I noted in my Annual Report last year that I intended to publish appropriate FOI determinations on the Ombudsman office website. Publication of FOI determinations on our website is now a regular part of our work, and I have abbreviated the case summaries in this Annual Report accordingly.

Another significant initiative has been the regular presentation by Ombudsman SA staff of one module in the accredited training program for FOI officers, which is co-ordinated by the State Records Office.

In relation to FOI determinations, again this year some agencies have sought to rely on generalised speculation about the adverse consequences of disclosure of a document, in seeking to refuse an FOI application. In my view this is not sufficient, and agencies need to provide specific reasoning for their determinations, based on the circumstances and contents of the actual documents.

However, I draw particular attention to an external review involving the Environment Protection Authority. That case was one of the rare instances where an agency ultimately has been able to present clear and persuasive reasons for justifying refusal of access to information under the public interest test in the internal working document exemption. The arguments were appropriately targeted to specific information in the document, and they were not generalised and speculative.

Report against the 2009-10 Business Plan

In 2009-10, the Ombudsman SA Business Plan identified three priority initiatives. In accordance with these initiatives:

- We successfully completed the implementation of a new case management system, in partnership with Justice Business Services and other small agencies in the Attorney General's Department. To complement this system, we completely reviewed our office procedures, and commenced a project to fully document all our policies.

- We arranged a one week specialist training course for all staff in investigative practices, and we continued regular training in areas such as administrative law and statutory interpretation.

- We commenced planning for enhanced accessibility and outreach services. I am keen to ensure that this occurs in collaboration with other integrity and complaints agencies,

[1] See section 5(5) of the *Whistleblowers Protection Act 1993*

particularly those associated with the Attorney General's Department, since I believe this is more relevant for the community, and more cost effective.

Other significant achievements in 2009-10 included:

· We conducted six regional seminars for local government on their responsibilities under the FOI Act

· We introduced an internship program for law students from the University of Adelaide and Uni SA. This has proven to be very beneficial for both the office and the students involved.

· We introduced new branding and an enhanced website for Ombudsman SA

Over the past year we continued to receive administrative support from the Attorney General's Department, and I record my appreciation to the Chief Executive Officer and his officers.

Statistical information

The new case management system, and revised office procedures incorporating target timeframes for completion of files, commenced operation on 15 March 2010. Information from the new system will provide a more complete picture of our work, and future reports will provide further detail on matters such as timeframes within which investigations are completed.

However, as this report covers a transitional period, some readers may have difficulty identifying information which they seek because some elements of the statistical reporting framework has changed. This concerns particularly the classification of matters as Ombudsman complaints, the identification of issues within complaints, and the introduction of new outcome categories.

This report seeks to provide explanations of changes where appropriate, and Appendices 2 and 3 provide definitions of outcome categories. If you would like further explanation, please contact my office and we will be happy to assist.

2010-11 Business Plan

Ombudsman SA's Business Plan for 2010-11 identifies three priority initiatives:

· To respond appropriately to the outcomes of the Attorney General's review of public integrity structures

· To commence a program of systemic audits

· To complete documentation of all office policies and business rules.

I intend to report on progress in these priorities in the Annual Report next year.

Richard Bingham
OMBUDSMAN
November 2010

Summary Statistical Information

Ombudsman Jurisdiction	2007-08				2008-09				2009-10			
	Government Departments	Local Government	Other Authorities	Total	Government Departments	Local Government	Other Authorities	Total	Government Departments	Local Government	Other Authorities	Total
Open Cases												
Cases open at beginning of period	68	83	29	180	65	93	44	202	65	64	26	155
Cases opened during period	1365	594	376	2335	1148	624	348	2120	1569	685	573	2827
Total cases open	1433	677	405	2515	1213	717	392	2322	1634	749	599	2982
Less Closures												
Advice Given	450	293	174	917	525	350	189	1064	609	315	273	1197
Alternate remedy another body									35	12	31	78
Conciliated									2			2
Declined	35	21	15	71	50	64	41	155	90	40	34	164
Full Investigation	9	10	4	23	6	26	6	38	9	20		29
S25 Finding/Mistake of Law										1		1
S25 Finding/Unlawful										2		2
S25 Finding/Unreasonable									3	2	1	6
S25 Finding/Wrong											1	1
Not substantiated									116	52	32	200
Ombudsman comment warranted									1	1		2
Outside of jurisdiction	26	6	12	44	9	9	8	26	29	9	14	52
Preliminary Investigation	821	245	144	1210	545	194	122	861	376	124	77	577
Referred back to agency									169	71	53	293
Resolved with agency cooperation									95	25	13	133
Transferred to WorkCover Ombudsman							2	2				
Withdrawn	27	12	12	51	21	14	11	46	41	32	20	93
Total Cases Closed	1368	587	361	2316	1156	657	379	2192	1575	706	549	2830
Still Under Investigation	65	90	44	199	57	60	13	130	59	43	50	152

FOI Jurisdiction	2007-08	2008-09	2009-10
Open Cases			
Cases open at beginning of period	50	54	37
Cases opened during period	214	167	180
Total cases open	264	221	217
Less Closures			
FOI advice given	145	92	106
FOI investigation	14	17	4
FOI review	53	84	29
FOI Application for Review withdrawn by applicant			9
FOI Application settled during review			3
FOI Determination confirmed			6
FOI Determination reversed			5
FOI Determination revised by Agency			2
FOI Determination varied			8
Transferred to WorkCover Ombudsman			1
Declined		1	2
Total Cases Closed	212	194	175
Still Under Investigation	52	27	42

Note: Explanations of the FOI and Ombudsman outcomes are in Appendices 2 and 3 respectively.

The department's willingness to cooperate with my office resulted in a good outcome.

Department for Correctional Services

Investigation into FOI fees and charges required from prisoners

Complaint summary

A prisoner complained to my office after the department asked him to pay a fee to access documents under the FOI Act. Preliminary inquiries revealed that the department had decided to charge the fee because the average balance in the prisoner's access account exceeded $200 over a two-month period.

Ombudsman investigation

Although the prisoner subsequently withdrew his complaint, given the potential impact on prisoners as a group I decided to conduct an own initiative investigation of the department's practices with respect to FOI fees and charges under sections 13(2) and 18(1a) of the Ombudsman Act.

Sections 13(c) and 29(2)(b) of the FOI Act require applications for access and internal review, respectively, to be accompanied by 'such application fee as may be prescribed'.

Section 53(2)(a) of the FOI Act states that the *Freedom of Information (Fees and Charges) Regulations 2003* 'must provide for such waiver, reduction or remission of fees as may be necessary to ensure that disadvantaged persons are not prevented from exercising rights under this Act by reason of financial hardship'.

Regulation 5 of the Regulations provides that an agency must waive or remit the fee or charge where the applicant satisfies the agency that they are a 'concession card holder' or 'that payment of the fee or charge would cause [them] financial hardship'.

A prisoner is not automatically eligible for waiver or remission of FOI fees or charges. Rather, it is for each prisoner to satisfy the agency of their financial hardship if they seek waiver or remission.

To assess whether or not payment of a fee or charge would cause a prisoner (or any other applicant) financial hardship within the meaning of regulation 5(b) of the Regulations, the particular circumstances of each case must be considered. An applicant may have access to sufficient funds to pay a fee or charge, and yet doing so may cause them financial hardship within the meaning of regulation 5(b).

Outcome and opinion

Following a meeting with, and input from, representatives of my office, the department agreed to include the following paragraph in letters to applicants requesting payment of an application fee:

If, however, you satisfy me that payment of fees or charges would cause you financial hardship I must waive or reduce the fees and charges. In order for me to determine whether you are eligible to have the fees and charges reduced or waived based on the grounds of financial hardship, please provide any additional information/ comments to support your claim. For example, information about your income and expenses.

The department's willingness to cooperate with my office resulted in a good outcome being achieved.

Department for Correctional Services

Unreasonable refusal to pay for prescribed reading glasses

Complaint summary

The complaint was about the refusal by a prison to provide prescription reading glasses to a prisoner on remand. The complainant advised that:

- he had been sent to a private optometrist by the SA Prison Health Service. The optometrist prescribed stronger reading glasses but he had been advised that Prison Health does not supply or pay for glasses.
- the prison had denied his request that it pay for the new glasses because he was not a sentenced prisoner.

· he had been on remand for more than one year, was due to attend court in six weeks time and expected to be on remand for a further six to eight months.

The department advised that:

· its normal practice is to fund optometry appliances for sentenced prisoners only. A Draft Guideline on Prisoner Access to Specialist Health Services proposes that eligibility for optometry services and appliances be limited to prisoners with a sentence of six months or more.

· as the complainant was due to appear in court in a short time, the decision not to supply his glasses would be reviewed after that date.

Ombudsman investigation

The complainant provided further information which my office communicated to the department. It then advised that a prison social worker had obtained an undertaking from a charity to pay half the cost of the new glasses for the complainant.

Outcome and opinion

Whilst the issue was resolved through the assistance of the charity, my informal view was that given the time the complainant had spent on remand, the department should pay the full cost of the new glasses prescribed for him.

Department of Education and Childrens Services

Improper interference in school-based decisions

Complaint summary

The complaint alleged that the department's head office had improperly interfered in decisions by the principal of the Rose Park Primary School about the future operation of the Family Unit, which was based on the school's property and was managed by the school. In particular, it alleged that the department had improperly changing the enrolment practices for the Unit.

It further alleged that the department undertook to have an independent evaluation of the Family Unit conducted, that it improperly edited the report of that process, and that it acted unreasonably in deciding its response to the evaluation.

Ombudsman investigation

After reviewing the file and some further submissions by the complainant, I agreed to conduct a full investigation of the complaint.

Under section 12 of the *Education Act 1972*, the responsibility for the maintenance of a proper standard of efficiency and competency in the teaching service rests with the Director General. In my view, whilst a principal has responsibility for the operations of a school, that responsibility is subject to the overriding obligations of the Director General, and hence the department.

I concluded that there was no evidence to support a claim that the department interfered improperly in the decision-making process about the Family Unit, nor that the principal was directed not to be involved with enrolments for the Family Unit.

I concluded also that the actions of the department in editing the evaluation report were not wrong, but it appeared to me that the issues could have been handled better. The lack of transparency contributed to the suspicion and tension which surrounded the decision-making process about the future of the Family Unit, notwithstanding the efforts of the department to explain the situation to the school community.

I also found that the department's decision about the model to be implemented for the future administration of the Family Unit was not unreasonable in the circumstances.

Outcome and opinion

I concluded that the department had not acted in a manner which was unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

I note that the complainant sought the release of the various versions of the evaluation report under FOI, and this issue came to my office under external review. The result of this review is outlined in the FOI section of this Annual Report.

Department for Families and Communities

Unlawful disclosure of personal affairs under the FOI Act

In last year's annual report I outlined a matter involving release by the Department for Families and Communities (**Families SA**) of information concerning the personal affairs of a family member to a previous family member. I found that because release had occurred without prior consultation with the first family member, it was contrary to law under the Ombudsman Act.

This year I dealt with a similar occurrence, albeit it must be said that the ramifications in this matter were far less serious than those detailed last year.

Complaint summary

A and B were once friends. A was staying with B at a time when something particularly bad happened in A's life. The relationship with A and B subsequently soured. In due course, A obtained access, under the FOI Act, to all information about A held by Families SA, of which there was a considerable amount. Amongst the many documents were several discrete references to B. B became aware of the release of the information as a result of being contacted by A via an internet social networking site. B was not contacted by Families SA prior to Families SA determining to release the information.

Ombudsman investigation

At least initially, there was debate between my office and Families SA as to whether the references to B actually concerned the 'personal affairs' of B under the FOI Act. I will not divulge the nature of the references here as I agreed to a request by Families SA that I not divulge the nature of the references in my report under the Ombudsman Act.

Whilst this put B at a disadvantage in terms of understanding my report, I acceded to the request because:

· the information not only concerned the personal affairs of B but also the personal affairs of A;

- Families SA strongly advised that if B applied for the information under the FOI Act, the information would be subject to an exemption claim by Families SA; and

- B had the option of making an application for the information under the FOI Act. If this happened, I may be called upon in due course to externally review a determination of Families SA not to release the information. If that occurred, it would be preferable in the circumstances for me to make decisions about the exemption status of the information after all parties (A, B and Families SA) had been given the opportunity to address me on the relevant issues.

Outcome and opinion

It was my view that three references to B contained information concerning the personal affairs of B, two of which fall squarely within B's 'personal qualities or attributes', whether real or perceived, and/or 'personal relationships' (see the inclusive definition of 'personal affairs' in section 4 of the FOI Act).

The consultation provision in section 26 of the FOI Act applies to documents that contain 'information concerning the personal affairs of any person (whether living or dead)'. Prior to giving A access to the information in the three references, the agency did not take any steps to obtain B's views as to whether or not the documents were exempt documents.

It was therefore my opinion that the release of the information without prior consultation with B was a breach of section 26(2) of the FOI Act, and therefore contrary to law under section 25(1)(a) of the Ombudsman Act.

Under section 25(2) of the Ombudsman Act, I recommended that Families SA provide B with an apology, and that the agency deal promptly with any application B may elect to make under the FOI Act.

Department of Further Education, Employment, Science and Technology (TAFE SA)

Unreasonable refusal to issue the complainant's daughter her parchment.

Complaint summary

The complaint was lodged on behalf of the complainant's daughter.

The complainant alleged that TAFE SA misled her daughter to believe she had completed the requirements of her IT course, only to be advised prior to lodging her request form to obtain her parchment that she had not completed a compulsory subject. The complainant requested TAFE SA to issue the parchment anyway.

The complainant also alleged that the course was falsely advertised, as the compulsory subject was not offered to external 'IT Flex' students when her daughter enrolled in the course. Further, the lecturer made no reference to the compulsory subject in her daughter's study plan.

Ombudsman investigation

TAFE SA acknowledged that there was no evidence that the student was informed she needed to complete the compulsory subject through a method other than IT Flex in order to complete the qualification. Her enrolment was uncommon in seeking to complete the full qualification exclusively via external/on line modes of training, and other students had enrolled in the compulsory subject as one of their face to face classes.

TAFE SA advised the complainant that they were unable to issue her daughter her parchment, as she had not completed the compulsory subject.

Outcome and opinion

In my view, the decision not to award the parchment was reasonable. The student did not complete the compulsory subject and for TAFE SA to issue a parchment would have been in breach of the requirements of the Australian Quality Training Framework.

However, I formed the view on the facts of the case that TAFE SA's failure to provide information had misled the complainant's daughter to believe she would have completed her course without the compulsory subject.

In my view, this failure was unreasonable, within the meaning of section 25(1)(b) of the Ombudsman Act.

Department for Transport, Energy and Infrastructure

Unreasonable failure to register a vehicle

Complaint summary

The complainant sought to engineer and build a special off-road vehicle, as a prototype for a production run of similar vehicles. He sought approval of the prototype for registration and road use, for which purpose the vehicle was required to satisfy the relevant design rules.

The department initially approved the project in principle in 2002, but it subsequently maintained that the vehicle failed to meet the required vehicle emission standards and thus could not be approved for registration.

The complainant constructed a second vehicle before the prototype had satisfied the registration requirements.

Ombudsman investigation

It appeared to me that from the commencement of the project in 2002, the complainant and the agency had had different understandings about the level of compliance required in relation to vehicle emissions. It also appeared that the Statement of Requirements for the vehicle issued annually by the department from 2002 to 2007 failed to adequately deal with the issue.

The prototype's apparent failure to comply with the relevant Australian Design Rule was compounded by the department not being able to test it, because its mass weight was significantly less than that for which the testing equipment was designed. The department held the view that it was always open to the complainant to have the vehicle tested elsewhere.

Outcome and opinion

Following my investigation, the department acknowledged the unique nature of the project and its history, and undertook to grant an exemption for the prototype to enable it to be registered. However, the department required that all subsequent vehicles constructed must satisfy the relevant design rules.

In my view, the complainant was hasty in constructing a second vehicle when it was clear that the prototype would not comply with the design rule relating to emissions. The department was clear in its communication with the complainant on this point, and I found that there was no administrative error.

Department for Transport, Energy and Infrastructure

Unreasonable refusal to grant full refund

Complaint summary

The complainant was not a current drivers licence holder and visited a local department office to reapply for his licence. The application was processed and he was provided with a licence.

Upon further checks by the department it was identified that the complainant's licence had been cancelled due to a medical condition. The department required him to supply a new medical report from a medical practitioner, which he obtained. The medical report did not support his application and so the department cancelled the newly re-issued licence.

The complainant then decided that he would seek a refund of the monies he spent obtaining the licence. The department refunded a small amount of the money but kept the remainder to cover administrative costs. The complainant felt that the full amount was owed to him.

Ombudsman investigation

Whilst the complainant failed to declare on his licence application that he had any medical history relevant to the application, the department acknowledged that its administrative checking of such applications was deficient. Applicants, particularly those with mental health issues, may not necessarily understand that they are falsifying information when applying for a licence.

Outcome and opinion

The department conceded that if it had been processing the application correctly, then it would never have been issued without the complainant first supplying a medical report. In light of this, and irrespective of the fact that the applicant failed to provide truthful information on his application, he was provided with a full refund. More importantly the policy regarding the processing of these applications was refined and all staff were instructed of these changes.

The refund of money to the complainant in a sense became the lesser issue. The fact that the department has now better processes in place to stop unsuitable persons being issued with a licence was the major remedy achieved from this investigation.

Department of Transport, Energy and Infrastructure

Incorrect registration of motor vehicle

Complaint summary

The complainant was the owner of a vehicle, which her former partner re-registered into his own name after the breakdown of their relationship. On being told that the vehicle was no longer registered in her name, the complainant applied to change the registration back into her name, and paid a necessary fee. In so doing, she sought legal advice and incurred costs.

Her application included a completed form entitled 'Application to Amend a Registration or Licence Record' which noted: 'This vehicle is not to be registered in [the former partner's] name due to legal proceedings'. She was advised that this would be effective to prevent the agency from accepting any subsequent applications for registration made by the complainant's former partner.

Subsequently, while not being the registered owner of the vehicle, the former partner changed the vehicle registration back into his name.

Ombudsman investigation

I confirmed with the department that the Register of Motor Vehicles is not a register of ownership or a system whereby legal title to a motor vehicle may be ascertained or transferred.

However, it appeared to me that the Registrar had been put on notice that some information in the former partner's second application required checking, and if the Registrar's existing statutory powers had been exercised, the difficulty which occurred would have been avoided. In particular, the Registrar could have exercised the discretion to refuse registration pending verification of information provided by an applicant, or on the basis that it was believed that information in the application was inaccurate.

Outcome and opinion

Whilst the decisions taken were in accordance with the law, I determined that the action of the department in accepting the subsequent application from the former partner was unreasonable.

Accordingly, I recommended that the department should reimburse the complainant's legal costs, and as a gesture of goodwill, the registration fee paid by her in connection with the original application.

The department responded by reimbursing the funds, and by conducting a review of the *Motor Vehicles Act 1959* and associated policies relating to the registration of motor vehicles when the Registrar of Motor Vehicles has notice that there are competing claims for ownership of a vehicle.

It also consulted with several Customer Service Centres and determined that ownership disputes arising from New Owner Re-registration applications were infrequent and generally had relatively little impact. I was advised that a fact sheet concerning ownership issues and general advice to the public would be created, and that this should help to avoid the creation of false expectations as to the power of the Registrar, as occurred in this case.

I was pleased to note the positive manner in which Revenue SA addressed this matter.

Department of Treasury and Finance - Revenue SA

Administrative practices - land tax entitlements

Complaint summary

I received a complaint regarding Revenue SA's failure to refund land tax that was paid at settlement in 2003. I found that the complaint was not sustained, and the complainant was notified of the outcome. However, in my view the complaint raised a question about whether taxpayers were being fully informed of their entitlements.

Ombudsman investigation

I conducted a preliminary investigation on my own initiative. I suggested to Revenue SA that the content of its Land Tax Notice of Principal Place of Residence Exemption letter should be reviewed, to consider the inclusion of additional information about land tax refund entitlements.

Revenue SA accepted the suggestion, but considered that rather than amend the letter itself it would be preferable to include a condensed copy of the Guide to Land Tax Legislation with the letter. It also noted that the revised practice would commence in July 2010 when its next 'housekeeping' process commenced.

Outcome and opinion

I was pleased to note the positive manner in which Revenue SA addressed this matter and its willingness to consider my suggestions for providing additional information about land tax refund entitlements.

Department of Water, Land and Biodiversity Conservation

Failure to enforce requirement to backfill a leaky well

Complaint summary

The complainant formed the view that excessive salinity in his well may have been caused by leaking from an adjoining landowner's well, and he sought the assistance of the department to address the issue. Over the following 18 months he became dissatisfied with the lack of response from the department, and he complained to my office.

Ombudsman investigation

Under section 144 of the *Natural Resources Management Act 2004*, the occupier of land on which a well is situated must ensure that the well is properly maintained.

In this case, the leakage from the adjoining landowner's well originally came to the attention of the department when the complainant raised it in September 2007. It was confirmed in May 2009, when a drillhole assessment of the well was completed. In December 2009, the department sought voluntary compliance by the adjoining landowner, and advised him that he was eligible for grant funding to assist.

Following some encouragement from my office, the department advised me in May 2010 that the well had been backfilled and replaced.

Outcome and opinion

In this case, the complainant's action brought to the department's attention a well that was leaking, and thus assisted it to meet its obligation to protect the state's water resource. In my view, the department's processes should reflect and acknowledge the benefit in such matters being brought to its attention by members of the public.

In my view, the delay in this case was unreasonable and wrong, within the meaning of section 25(1) of the Ombudsman Act.

Government Departments	Complaints Received	1 July 2009 to 30 June 2010
Attorney-General's Department	19	1.2%
Department for Correctional Services	601	38.3%
Department for Environment and Heritage	9	0.6%
Department for Families and Communities	121	7.7%
Department of Education and Children's Services	58	3.7%
Department of Further Education, Employment, Science & Technology	16	1.0%
Department of Health	17	1.1%
Department of Planning and Local Government	4	0.2%
Department of Primary Industries & Resources	11	0.7%
Department of the Premier and Cabinet	11	0.7%
Department of Trade and Economic Development	2	0.1%
Department of Transport, Energy and Infrastructure	195	12.4%
Department of Treasury and Finance	55	3.5%
Department of Water, Land and Biodiversity Conservation	8	0.5%
Electoral Commission of South Australia	6	0.4%
Environment Protection Authority	9	0.6%
SA Housing Trust	252	16.1%
SA Police	3	0.2%
SA Water Corporation	172	11.0%
Total	1569	100%

Government Departments **Complaints Received: Issues** **1 July 2009 to 30 June 2010**

	(Other)	Department for Correctional Services	Department for Families and Communities	Department of Transport, Energy & Infrastructure	SA Housing Trust	SA Water Corporation	Total	Percentage
Abuse or Assault/Physical/By other detainees		1					1	0.1%
Abuse or Assault/Physical/By staff		3					3	0.2%
Abuse or Assault/Verbal/Harassment/Threats by staff		2					2	0.1%
Access to educational services	2	1					3	0.2%
Access to information	6	1		1			8	0.6%
Access to treatment	1	3					4	0.3%
Administration	46	9	24	46	13	18	156	11.1%
Administrative practice/policies	46	17	32	66	11	20	192	13.7%
Advice	1				1		2	0.1%
Approvals				5			5	0.4%
Case review	1						1	0.1%
Citizens' Rights	1		1	2			4	0.3%
Communication		2	1	1	3		7	0.5%
Complaint Handling/Delay	7	4	3	2	8	1	25	1.8%
Complaint Handling/Inadequate reasons		1			1	2	4	0.3%
Complaint Handling/Inadequate remedy	1				5	2	8	0.6%
Complaint Handling/Inadequate processes	6	4	2	4	9	2	27	1.9%
Complaint Handling/Wrong conclusion	1		1				2	0.1%
Conduct	4					1	5	0.4%
Conduct/Misconduct		1					1	0.1%
Correspondence/Communications/Records/ Delayed no response	4	4		1			9	0.6%
Correspondence/Communications/Records/ Incorrect	1	1		1			3	0.2%
Correspondence/Communications/Records/ Withholding of information		1					1	0.1%
Correspondence/Communications/Records/ Wrongful disclosure of information		1					1	0.1%
Curriculum issues	1						1	0.1%
Custodial Services/Canteen		4					4	0.3%
Custodial Services/Cell conditions		6					6	0.4%
Custodial Services/Clothing		5					5	0.4%
Custodial Services/Educational Programs		3					3	0.2%
Custodial Services/Employment		3					3	0.2%
Custodial Services/Food		2					2	0.1%
Custodial Services/Health related services		12					12	0.9%
Custodial Services/Prisoner accounts		3					3	0.2%
Custodial Services/Prisoner mail		5					5	0.4%
Custodial Services/Property		21					21	1.5%
Custodial Services/Recreation programs & services		1					1	0.1%
Custodial Services/Rehabilitation programs		2					2	0.1%
Custodial Services/Telephone		2					2	0.1%
Daily Routine		114					114	8.1%
Discipline	2	3					5	0.4%
Double up cells		11					11	0.8%
Duty of care	3	2	2			1	8	0.6%
Employment		4					4	0.3%
Fees/charges/levies	12	1		3	6	22	44	3.1%
Financial assistance	1						1	0.1%
Financial issues	14	5	3	9	5	17	53	3.8%
Financial/Procurement/Facilities/Compensation/ Damage/Property					1	2	3	0.2%

Financial/Procurement/Facilities/Debts	1	1			2	7	11	0.8%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authorities/Cost of use					1	1	2	0.1%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authorities/Denial of use						1	1	0.1%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authorities/Fencing					1		1	0.1%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authorities/Inadequate				2		1	3	0.2%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authorities/Sale/Lease					1		1	0.1%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authorities/Unsafe condition						1	1	0.1%
Financial/Procurement/Facilities/Procurement by Agencies/Late payment				1			1	0.1%
FOI Practices and procedures	1						1	0.1%
FOI advice	1						1	0.1%
Funding	1		1				2	0.1%
Health	1	1		2			4	0.3%
Home Detention		7					7	0.5%
Housing					122		122	8.7%
Land use	1						1	0.1%
Leave		5					5	0.4%
Mail		4					4	0.3%
Medical	3	8					11	0.8%
Officer misconduct	3	12	5		3		23	1.6%
Ordinances, Regulations, By-laws - Failure to enforce	1					1	2	0.1%
Other		50		1	3	3	57	4.0%
Planning and development	1						1	0.1%
Prison Management/Discipline/Security/Daily regimen		3					3	0.2%
Prison Management/Discipline/Security/ Discipline/ Management		5					5	0.4%
Prison Management/Discipline/Security/Drug testing		3					3	0.2%
Prison Management/Discipline/Security/ Protection		2					2	0.1%
Prison Management/Discipline/Security/Transport		3					3	0.2%
Prison Management/Discipline/Security/Visits		5					5	0.4%
Prison Records/Official Correspondence/Incorrect		1					1	0.1%
Property		68					68	4.8%
Punishment		9					9	0.6%
Quality of treatment	1	1	2				4	0.3%
Rates and charges	1			3	2	23	29	2.1%
Record keeping			1	1			2	0.1%
Regulation and Enforcement/Complaint handling		1					1	0.1%
Regulation and Enforcement/Enforcement Action/ Excessive		2	2			1	5	0.4%
Regulation and Enforcement/Enforcement Action/ Insufficient	3				1		4	0.3%
Regulation and Enforcement/Enforcement Action/ Unfair	2	1					3	0.2%
Regulation and Enforcement/Infringements/ Unreasonably issued				1			1	0.1%
Regulation and Enforcement/Inspections			1	1		1	3	0.2%
Regulation and Enforcement/Licensing/ Conditions	1			2			3	0.2%
Regulation and Enforcement/Licensing/Refusal				2			2	0.1%
Regulation and Enforcement/Licensing/Renewal				4			4	0.3%
Regulation and Enforcement/Complaint handling				1			1	0.1%

Regulation and Enforcement/Fees	1			1		1	3	0.2%
Revenue Collection/Land Tax	1			1			2	0.1%
Roads				1			1	0.1%
Roads and Traffic/Licensing/Conditions				1			1	0.1%
Roads and Traffic/Licensing/Medical test				1			1	0.1%
Roads and Traffic/Registration/Fees/Charges				2			2	0.1%
Roads and Traffic/Charges/Fines				1			1	0.1%
Roads and Traffic/Road Management	1			1			2	0.1%
Security		1					1	0.1%
Segregation		1					1	0.1%
Sentence Management/Parole		2					2	0.1%
Sentence Management/Placement/Location		5					5	0.4%
Sentence Management/Transfers		5					5	0.4%
Services	1	4	15	3		1	24	1.7%
Service Delivery/Assessment	2						2	0.1%
Service Delivery/Conditions		1		1	1	1	4	0.3%
Service Delivery/Eligibility for services	1	2			2	1	6	0.4%
Service Delivery/Failure to Act/Provide	3	1	3	2	15	4	28	2.0%
Service Delivery/Fees and Charges		1		2	1	7	11	0.8%
Service Delivery/Financial assistance	1		1				2	0.1%
Service Delivery/Quality	4	2		4	1	1	12	0.9%
Service Delivery/Termination of services		1			2		3	0.2%
Transfers		58					58	4.1%
Transport				2			2	0.1%
Trees					2	1	3	0.2%
Visits		2					2	0.1%
Work and education		6					6	0.4%
Total	198	549	100	185	223	145	1400	100%

Note: Issues which appear as shaded lines relate to complaints finalised before 15 March 2010, when the new case management system commenced operation. Those appearing in unshaded lines relate to complaints finalised after that date. The unshaded issues will appear in future reports.

Government Departments **Complaints Completed 1 July 2009 to 30 June 2010**

Attorney-General's Department	17	1.1%
Department for Correctional Services	601	38.1%
Department for Environment and Heritage	9	0.6%
Department for Families and Communities	124	7.9%
Department of Education and Children's Services	59	3.7%
Department of Further Education, Employment, Science & Technology	17	1.1%
Department of Health	14	0.9%
Department of Planning and Local Government	2	0.1%
Department of Primary Industries & Resources	12	0.8%
Department of the Premier and Cabinet	12	0.8%
Department of Trade and Economic Development	2	0.1%
Department of Transport, Energy & Infrastructure	199	12.6%
Department of Treasury and Finance	55	3.5%
Department of Water, Land and Biodiversity Conservation	8	0.5%
Electoral Commission of South Australia	6	0.4%
Environment Protection Authority	13	0.8%
SA Housing Trust	252	16.0%
SA Police	2	0.1%
SA Water Corporation	171	10.9%
Total	1575	100%

Government Departments **Complaints Completed: Outcome 1 July 2009 to 30 June 2010**

	Other	Department for Correctional Services	Department for Families and Communities	Department of Transport, Energy & Infrastructure	SA Housing Trust	SA Water Corporation	Total	Percentage
Advice given	99	176	77	78	108	73	611	38.8%
Alternate remedy available with another body	3	13	13	3	1	2	35	2.2%
Conciliated				1	1		2	0.1%
Declined	11	24	5	16	14	10	80	5.1%
Declined/No sufficient personal interest or not directly affected	2	2		1			5	0.3%
Declined/Trivial, vexatious, etc		1		1	1		3	0.2%
Declined/Withdrawn by complainant	1	1		1			3	0.2%
Determination		1					1	0.1%
Full investigation	4	3	1				8	0.5%
Not substantiated	17	44	3	17	18	17	116	7.4%
Ombudsman comment warranted				1			1	0.1%
Outside of Jurisdiction	8	8	2	5	1	1	25	1.6%
Out of Jurisdiction/Agency not within jurisdiction		2	1				3	0.2%
Out of Jurisdiction/Judicial body				1			1	0.1%
Out of time	1		2				3	0.2%
Preliminary investigation	37	207	8	47	49	26	374	23.7%
Referred back to agency	31	57	5	13	36	27	169	10.7%
Resolved with agency cooperation	5	53	5	8	12	12	95	6.0%
S25 Finding/Unreasonable	3						3	0.2%
Withdrawn by complainant	6	9	2	6	11	3	37	2.3%
Total	226	601	124	199	252	171	1575	100%
	14.4%	38.2%	7.9%	12.6%	16.0%	10.9%		

Note: See Appendix 2 for definitions of outcomes

The first part of the complaint was quickly resolved...

Alexandrina Council

Failure to obtain Traffic Impact Statement

Complaint summary

The complainant objected to the installation of a traffic control device to prevent a right hand turn from a Strathalbyn street, and alleged that the council had not followed the relevant provisions of the *Road Traffic Act 1961* (**the RT Act**) in installing it.

After examining that issue, I commenced an own initiative investigation into a related matter.

Ombudsman investigation

In relation to the original complaint, I concluded that the council was not required to follow section 32 of the RT Act in prohibiting the right hand turn, as it was reasonable to argue that a road 'closure' was not effected within the meaning of the section.

However, it appeared to me that prior to installing the device, the council had failed to obtain a Traffic Impact Statement (**TIS**) as required by clause A.7 of the Minister for Transport's General Approval to Councils (Minister's General Approval) issued under section 17 of the RT Act.

Outcome and opinion

I found that the preparation of a TIS prior to the installation of traffic control devices is a mandatory requirement. Although the council engaged a consulting engineering firm to ensure the design complied with the requirements of the Code of Technical Requirements for the Legal Use of Traffic Control Devices, this did not equate to a TIS.

I suggested that councils should have in place internal processes (such as checklists) to ensure that key steps such as public notification, consultation and the preparation of TIS's are completed prior to installation of traffic control devices.

City of Burnside

Complaint following FOI external review

Complaint summary

My predecessor conducted a long running external review under the FOI Act in which the complainant sought access to all documents arising from some incidents between him and the council. My predecessor determined that he should have access to some, but not all, documents sought.

On his original application for access under the FOI Act, the complainant had indicated that he would like copies of the documents, and would like to inspect the originals. This is not uncommon, especially where an applicant would like to see if an agency has added any notations to the original documents.

The complainant subsequently contacted my office and stated that the council:

- refused to allow him to inspect the originals, and
- could not locate the originals of some documents, which had apparently been scanned and copies provided to him.

Ombudsman investigation

The first part of the complaint was quickly resolved, as the council agreed to allow the applicant to inspect those originals it still had.

The second part of the complaint was more problematic, as handwriting on one original was very faint on the scanned copy and moreover, a part of the document apparently did not survive the scanning process at all.

Outcome and opinion

Bearing in mind the meaning of 'official records' in section 3(1) of the *State Records Act 1997* (**the SR Act**) and item 12.16.2 of the *General Disposal Schedule 20 for Local Government Records in South Australia* (third edition), I concluded that some of the documents, including that which gave rise to the poor copy, constituted 'official records' which ought to have been retained for seven years. Seven years had not elapsed since they had been produced, and I did not consider that they fell within the 'Normal Administrative Practice' for the routine destruction of certain documents.

Accordingly, I concluded that they were possibly destroyed contrary to section 23 of the SR Act, and therefore contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

I did not consider that council officers were acting in bad faith. In the circumstances, I considered that a reasonable resolution to the matter would be for the council to educate its employees about their obligations under the SR Act, and to liaise with State Records, which has administrative responsibility for the SR Act.

In the course of my investigation, the applicant raised an interesting claim: that where he has asked to inspect the original document, and where that document is an email, he should be able to inspect the original electronic document (i.e. have access to it on a computer) so that he has access to the 'metadata' behind the email.

I was not convinced. Other than emails which had been printed out and written on (in which case he was entitled to see the copy with the original handwriting), I decided that the point was for him to have access to the words written in the email, not any underlying technical data associated with electronic documents. Underlying technical data relates to how a document is formatted and stored, and in my view will fall outside the scope of the vast majority of FOI applications.

City of Charles Sturt

Ombudsman 'own initiative' investigation: unjust rent increases applied to the residents of Casuarina Lodge, Woodville.

Summary of complaint

This investigation arose from a complaint made by a member of the public alleging that the council had unjustly applied a rent increase for the lodge at which he resided. Because other persons may have been similarly affected, I commenced an own initiative investigation under section 13(2) of the Ombudsman Act.

Ombudsman investigation

The issue raised in the investigation was whether the council had increased the residents' rents in accordance with the *Residential Tenancies Act 1995*.

The council acknowledged that technically the residents were not given the required 60 days notice before their rents were increased, although there had been residents meetings and informal advice of what was proposed. The council agreed to refund the residents the rental increases for those 60 days, by way of a credit to their rent accounts.

Outcome and opinion

I concluded that the council's rent increases were made contrary to the Residential Tenancies Act 1995, and were unlawful within the meaning of section 25(1)(a) of the Ombudsman Act.

However, the council acknowledged the error, and took appropriate action to mitigate the impact of it. In the circumstances, I declined to make any recommendation under section 25(2) of the Ombudsman Act.

City of Charles Sturt

Unreasonable financial demand

Complaint summary

The complainant was a pensioner and property owner. He received his rates notice for the 2009/2010 financial year in July 2009, and paid it in full the following month. Then in March 2010 he received an additional rates notice.

The complainant queried the council and was advised that the Valuer General's Office had identified that there were two maisonettes on the title, and not one home as previously thought. Hence, the second notice sent in March.

The complainant was upset with the communication provided by the council and questioned whether it was reasonable that he pay additional rates so late in the financial year. He accepted that in future he would be charged for the two maisonettes, but did not think that council's decision to charge twice in one financial year was fair and reasonable.

Ombudsman investigation

The Valuer General's office had provided information to the council as a correction of fact, when it had established that there were two households on the one title. A junior council officer had processed it without considering the ramifications for the ratepayer, and had not consulted a senior officer. Had this officer sought guidance they would have been advised not to action the change until the 2010/2011 financial year.

The council expressed concern about how this second rates notice appeared and how it had affected the complainant. It agreed to waive the second rates notice and write a letter of explanation including an apology.

Outcome and opinion

There is no doubt that lawfully the charge for additional rates was valid. However, the council accepted that the issue had not been managed reasonably, and that the communication between the council and the complainant had been deficient.

The council proactively sought information from other councils about how they would have managed this situation. Council staff were reminded to refer these types of changes to a relevant manager, and the council amended its policies accordingly.

District Council of Grant

Unreasonable tender process

Complaint summary

The complainants sought review in relation to the council's tendering process for a cleaning contract. There was also an issue of communication between the council and the contractors concerning performance expectation and feedback.

Ombudsman investigation

There are good reasons for tender procedures to be spelt out in detail and strictly adhered to. The procedures provide:

- fairness between tenderers;
- impartiality into the process; and
- protection for council officers who might otherwise be perceived as not conducting a tender process impartially and fairly.

In this case, there was no evidence that the council had complied with its Purchasing Policy in relation to its open tender process. The Policy specifically provided that the admission of late tenders was not permissible yet the council awarded the cleaning contract to a company

which did not put a tender in within the prescribed time limits.

Outcome and opinion

I found that the council's actions were unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act.

City of Onkaparinga

Unreasonable action to recover apparently overdue library items, and poor customer service.

Complaint summary

The complainant alleged that the actions taken by the council's library to recover two items which he had borrowed were unreasonable. He stated that he had returned the items when they were due in February 2009, and received no reminder notices until a final notice dated 25 May 2009. The final notice stated that if he did not return the items within 14 days the matter would be placed in the hands of a debt collection agency.

The complainant also alleged that a member of the library staff was disrespectful when his wife raised the matter with her, and that the council failed to respond adequately to 3 letters of complaint.

Ombudsman investigation

I was advised that the library's investigation into the matter uncovered an error.

The error was caused by a misread bar code reading on checkout, possibly due to the need to enter the code manually because of an electronic systems failure; this meant that the item was not registered correctly on return.

Outcome and opinion

I concluded that the library's actions were unreasonable in the circumstances. It appeared that it had no system in place to deal with the possibility (which actually occurred in this case) that the checkout and/or return items were not properly recorded, and thus that they appeared to be outstanding although they had been correctly returned. Had a system been in place, it seems unlikely that this sequence of events would have occurred.

I also suggested that the council should consider whether a debt collection agency should be involved when a borrower has not had a prior opportunity to dispute an overdue fee.

My investigation found that in the circumstances there were no significant problems in relation to customer service.

City of Marion

Unreasonable refusal to provide reimbursement of maintenance costs

Complaint summary

I received a complaint about the council's refusal to reimburse the complainant for the cost of repairing a damaged stormwater outlet in front of her property. When the complainant had noticed water leaking from the outlet she had contacted the council to report the damage, and had asked a plumber who was working at her property to repair it. The council informed her that the stormwater outlet from a property to the road is the responsibility of the resident.

The council also informed her that if maintenance work results in damage to a stormwater outlet, it is usual for the council to replace it. However, a search of council's records did not reveal that any council work had been undertaken in front of the complainant's property.

Ombudsman investigation

I conducted a preliminary investigation. The council reiterated that the cost of the repairs and maintenance to the stormwater pipe in front of the complainant's property was the responsibility of the property owner. However, as the complainant had paid for the stormwater outlet repair in good faith, I asked the council to review their decision.

Outcome and opinion

The council maintained the view that it had acted reasonably in the matter, and that it had followed the proper process in declining to meet the cost of the outlet repair.

However, at my request it decided that in this case, as a gesture of goodwill it would pay for the repair to the stormwater outlet. It reimbursed the complainant.

Mid Murray Council

Unreasonable development assessment process

Complaint summary

The complaint was about the council's assessment of a development application for a new dwelling on an allotment in a shack settlement area on the River Murray. The complainants (as adjoining owners) expressed concerns about the location of the new dwelling on the allotment, and that the building floor plan apparently permitted two separate dwellings.

The complainants stated that the proposed development should have been assessed as 'non-complying' and therefore as a Category 2 development. As the council assessed the application as a Category 1 development, they did not have the opportunity to make representations about the proposed development or to appeal to the Environment Resources and Development Court.

After raising their concerns, the complainants were advised that the council had sought legal advice and had determined that the development application had been assessed in the correct manner, and that no further action would be taken.

Ombudsman investigation

I sought information from the council about two issues:

- whether the council's assessment of the proposed development against Principle of Development Control 6 (one dwelling per allotment) was reasonable

- whether the council's assessment of the proposed development against Principle of Development Control 25 (distance between the dwelling and the waterfront) was reasonable

On the first issue, the complainants stated that the proposed dwelling was non-complying as it may be used as two separate dwellings. The floor plan for the proposed shack showed two almost identical areas, each a mirror image of the other.

The council staff considered that there was no 'reasonable justification' to dispute the applicants' claim.

Council planning staff raised this matter with the applicants who claimed that the building was to be a single detached dwelling. The council staff considered that there was no 'reasonable justification' to dispute the applicants' claim.

On the second issue, information obtained from the council showed that the council planning officers had encountered problems in the interpretation and application of Principle 25. The council properly obtained their own legal advice in relation to the interpretation of the first of Principle 25's first listed exemptions - 'the development is not sited closer to the waterfront than any part of an existing dwelling on either side'.

The council acknowledged that the reference to the 'waterfront' in Principle 25 is ambiguous and decided that Principle 25 should be reviewed and amended to clarify its intent and application. It also decided to continue to determine the waterfront of each allotment on a case by case basis.

As a consequence of its visual site inspections, the council's Development Report to the Development Assessment Panel recommended that the proposed dwelling be located in line with the adjoining shack. The council later acknowledged that the site plan did not give a true indication of the nature of the waterfront. A more recent inspection of the site showed that the distance from the water's edge to the front of the existing and new buildings on the adjacent allotments varied by approximately one metre. Council staff now acknowledge that the new dwelling is now the width of its staircase in front of the existing adjacent dwelling.

Outcome and opinion

In my view, it was unreasonable for council planning staff to base their advice on Principle 6 on the subjective statement from the applicants that the building would be a single detached building. The statement from the applicants did not provide sufficient and adequate information on which to base the decision that the various requirements of the Development Plan had been met.

I accepted that there was a significant difference of opinion about the varying measurements taken from the waterfront to the existing and new adjacent dwellings. Nevertheless, it is now clear that the new dwelling has been built at least one metre closer to the waterfront than the adjacent, existing dwelling.

As the building had been built, the complainants have been left with no effective remedy. Whilst there were undoubted difficulties in applying Principle 25, in my view the council's consent process and assessment of the proposed development was inadequate.

In expressing this view, I noted that:

- The council had had regard for the legal advice obtained.
- A council review of the Development Plan has identified inadequacies, and the issues will be addressed by way of the River Murray Zone and Minor Amendments Development Plan Amendment.
- The council has reinforced with its planning staff the importance of a thorough and comprehensive consideration of siting issues for development applications for shacks in the area.

Northern Areas Council

Alleged failure to provide traffic report

Complaint summary

The complainant requested a copy of a traffic impact study (**the traffic study**) that he had seen being perused by a developer at a council-convened meeting in January 2009. The traffic study related to a proposal by the developer for a commercial development on land adjacent to the complainant's property, and to a proposed Development Plan Amendment (**DPA**) for that area.

After the meeting, the complainant asked a council officer for a copy of the traffic study, and the officer denied knowledge of it. The officer later provided the complainant with two different documents, neither of which was the traffic study he had seen at the meeting.

The complainant then read the minutes of the November 2008 council meeting which stated that the council had received an unsatisfactory traffic study from its consultant and had asked that it be amended 'to reflect the realistic and accurate traffic movements in this area.' he requested a copy of that document.

The council gave him a copy of a draft 'Initial' Traffic Impact Study dated October 2008. Having found no statements suggesting a major obstacle to rezoning in this document, the complainant tried to obtain the traffic study by a Freedom Of Information Act request. The council officer then assured the complainant that the document he was requesting had already been provided to him. The council's CEO also provided the complainant with a written declaration stating that the document he was seeking 'does not exist.'

Later the same day, the council officer apologised to the complainant and advised him that a previous traffic study had been located and a copy of this study, dated September 2008, was provided to him. He noted that it had a different appearance to the document he had sighted in January 2009, but the text did correlate to the November 2008 minutes.

Ombudsman investigation

Information was sought from the council about two issues, i.e. whether the council's provision of a draft traffic study to the developer was reasonable and whether the council's explanation for its failure to provide the traffic study to the complainant was reasonable.

On the first issue, information obtained from the council showed that:

- The council officer, with the CEO's approval, provided the traffic study to the developer to explain a perceived delay in processing the DPA. It did so to explain that incorrect traffic data needed to be corrected as it may have affected how the subject land could be developed.
- Statements in the council minutes indicate that the council had fostered expectations that the DPA process would be completed in less time than it was. The *Development Act 1993* and the Development Regulations 2008 provide for public consultation of a proposed DPA but do not provide for the release of a draft impact study report to an affected land owner.

As required by the *Local Government Act 1999*, the council has adopted a code of conduct which includes principles requiring council employees to:

- Act in a fair, honest and proper manner according to the law, including just and non-discriminatory behaviour
- Be fair and honest in their dealings with individuals and organisations
- Respect information obtained in the course of their duties and functions and use it in a careful and prudent manner.

In my view, the council's action in providing the traffic study to the developer in advance of the public consultation period may have discriminated against other interested parties, and was arguably contrary to the council's code of conduct.

In relation to the second issue, the complainant asserted that when he first requested the traffic study from the council officer, he had described its appearance in some detail. His later requests had referred to the traffic study referred to in the November 2008 council minutes.

The council explained its delay in providing the traffic study as 'a combination of innocent misunderstandings and honest mistakes'. However, it acknowledged that its record management practices need to be improved.

Outcome and opinion

On the first issue, I observed that the failure by council to provide the traffic study to all interested parties (including the complainant) at the same time contributed to a climate of mistrust between the complainant and the council.

On the second issue, while doubt was created about the Council's explanations for its delay in providing the traffic studies, I was not persuaded that the council was deliberately withholding these documents from the complainant. However, council staff were unable to comply with the complainant's requests, and the council's records management processes were inadequate.

I found that the council's failure to provide the complainant with the September 2008 Traffic Study within a reasonable time was based wholly or in part on a mistake of fact, in terms of section 25(1)(f) of the Ombudsman Act.

City of Port Adelaide Enfield

Unlawful impounding and disposal of a motor vehicle

Complaint summary

The complainant owned a vehicle, which she allowed a relative to use. The relative left the vehicle on a public street for a period of time, and the council subsequently seized and sold it. The complainant first contacted the council when she started receiving expiation notices for offences involving the vehicle. She then contacted my office in relation to this, and the fact that the council sold her vehicle.

Ombudsman investigation

The council was exercising its power to seize and dispose of abandoned vehicles under section 237 of the Local Government Act . It had a range of procedures in place.

The council had posted a notice to the complainant advising her that the vehicle had been seized and would be disposed of if she did not recover it. The complainant passed the notice to her relative on the understanding that the relative would contact the agency.

The relative did not contact the council and the vehicle was disposed of. After disbursements an amount of $73 was sent to the complainant.

Outcome and opinion

The council took steps to alert the vehicle owner that the vehicle was at risk of being impounded if it was not moved. This is not a statutory requirement, but it represents good practice.

Councils have a responsibility to ensure that applicants meet the requirements of Development Plan Consents within a reasonable timeframe.

Although the seizing and impounding of the vehicle was lawful, the council failed to serve the notice personally on the complainant as required by the Act. This was a technical breach, as the complainant had actually received the notice posted to her. The breach was compounded when a person without the appropriate delegated authority issued the notice, and the notice did not comply with the strict requirements of the Act.

The council did not assess the value of the vehicle prior to disposal by public tender. In my opinion, good practice requires that an understanding of the likely value of the vehicle should be ascertained prior to disposal. This does not require a full market valuation in every case, although the greater the apparent value of the vehicle, the more stringent the assessment required. Neither does it mean that the council must achieve the assessed value at the time of disposal, but the council must be able to demonstrate that the disposal was conducted fairly.

In my report I acknowledged that the council had reviewed and changed a number of features of its section 237 procedures before I concluded my report.

Port Pirie Regional Council

Failure to enforce development conditions

Complaint summary

The complainant alleged that the council had failed to enforce the conditions of its Development Plan Consent (**DPC**) on land adjoining his. The conditions required that driveways and car parking would be marked prior to occupation of land.

Ombudsman investigation

It was clear that the occupier of land had not complied with the conditions of the DPC, although they had been in occupation for more than 12 months. The council had sought to negotiate compliance over that time, but this had been unsuccessful and had not been pursued with vigour.

Outcome and opinion

I found that the failure to enforce the conditions was unreasonable, and I recommended that the council should ensure the occupiers meet the requirements of the condition of the DPC as soon as reasonably practicable.

I noted that outstanding issues even of relatively minor matter can be an irritation to the public, and that councils have a responsibility to ensure that applicants meet the requirements of DPC conditions within a reasonable time frame.

District Council of Tumby Bay

Unreasonable failure to enforce a Land Management Agreement

Complaint summary

The complainants owned a property in a marina development. They alleged that an adjoining residential property in the development was being used for holiday rentals, apparently contrary to a Land Management Agreement (**the LMA**) applying to the development. They stated that:

- When they bought their home in the marina (in October 2006), they were required to sign the LMA which could be altered only if all residents of the marina agreed.
- The council then made 'changes' to the LMA, 'redefining' the term 'private residential use' to include holiday rentals.
- Their immediate neighbours rented out their property for holidays, leading to noise and other disturbances.
- They complained in writing to the council in January 2009 and received a reply in October 2009. The council's discussion of the complaint had been held in confidence.

The council advised that the marina LMA was made in September 2001 and stated in part that 'the owner must only use the land for private residential purposes.'

In mid-2006, the council surveyed marina landholders about amending the LMA to define 'private residential purposes' as occupation for not less than six consecutive months. As only a minority of landowners indicated support for it, the council decided not to amend the LMA.

In June 2008, the council received legal advice confirming that amending the LMA would be problematic. The advice suggested that the council develop an interpretation policy as a guide to landowners on how the council proposed interpreting potentially ambiguous provisions of the LMA.

The advice pointed out that an interpretation policy could be implemented by the council unilaterally. The council authorised the preparation of a draft Interpretation Policy and received the current version in October 2008. In December 2008, it resolved to supplement the LMA with the Interpretation Policy for new developments in the marina only.

The Interpretation Policy states:

… the reference to the use of the land for private residential purposes means that the land should be used as the permanent residential premises for one family, person or group of persons. … It may be used as a holiday house … It does not prevent the owner of the premises renting the premises to a person or persons for a short period of time for holiday purposes. The premises should not be used for short term accommodation for transient persons …

When the complainants complained, the council sought a response from the owners of the adjoining property. The adjoining owners:

- disagreed that their property is a commercial enterprise
- disputed that their tenants caused disruption to the extent alleged by the complainants

After getting legal advice, the council resolved

- to advise the complainant that future behaviour problems with adjoining occupants will be reported to police for action
- to advise the adjoining owners that personal occupation of their unit should be 'attempted' during each year
- that behavioural problems at the marina would be brought to the attention of SA Police for general patrol duties during holiday periods.

Ombudsman investigation

I sought information from the council about two issues

- whether the council's adoption of an Interpretation Policy to 'supplement' the LMA was in accordance with relevant legislation, policies and the provisions of the LMA
- whether the council's response to the complaint was lawful and reasonable

On the first issue, the complainant claimed that the council had unilaterally 'changed' the LMA by introducing the Interpretation Policy which 'redefined' the term 'private residential use'.

The information provided by the council, about its attempt in 2006 to gauge support for amending the LMA, demonstrated that the council was aware that it cannot amend the LMA without the agreement of all marina land owners.

In my view, notwithstanding the council's view that the Interpretation Policy is a separate guideline which does not change the content or legal status of the LMA, the council's presentation and description of the Policy to marina landowners may not have made that point clear.

On the second issue, the council investigated and sought legal advice about the complaint. The council concluded that the use of the adjoining property suggested that it was being used more as a rental property than for private residential purposes, and that it was arguable that the adjoining owners were not complying with the LMA.

The council wrote to the adjoining owners, but in my view the letter did not fully convey the fact that the adjoining owners' use of their property may not be in accordance with the LMA.

Outcome and opinion

On the first issue, I noted that the council properly sought legal advice on the proper application of the LMA. The council procured an interpretation policy as a pragmatic means of administering it.

On the second issue, I noted that the council followed a proper process, but appeared reluctant to tell the adjoining owners that they may not be complying with the LMA. I considered that the council's response to the complaint was lawful but was not reasonable. In my view the council's response to the complainants had the effect of unfairly disadvantaging the complainant, and favouring the adjoining owners.

I considered that the council acted in a manner which was unreasonable and wrong within the meaning of sub-sections 25(1)(b) and 25(1)(g) of the Ombudsman Act.

Based on the legal advice provided to the council, I recommended that it should:

- Make a proper assessment of the adjoining owners' claim that their property is not a commercial enterprise.
- Seek more information on the extent to which the adjoining property is available for short-term rental.
- Based on the above information and in consultation with the council's legal adviser, assess the feasibility of enforcing the terms of the LMA using the civil enforcement provisions in section 85 of the Development Act.

The council advised me that a development checklist would be devised to better inform and advise planning staff.

City of West Torrens

Unreasonable planning approval

Complaint summary

The complainant stated that the council's approval of the construction of a two-storey dwelling had significant impact on her home's open space and interior privacy, due to overshadowing. She had informed the council of the fact that her family's habitable living areas were located on the northern side of her residence and the living areas relied on the northern winter sun for heat and light. Her statements emphatically expressed her concern that the north facing living areas would be adversely affected by the proposed development.

Ombudsman investigation

The council prepared and presented a report on the development application for the consideration of the Development Assessment Panel (**the DAP**). The primary purpose of such a report is to assist the DAP with the task of assessing and deciding the development application.

My investigation focussed on the adequacy of the report. Although the application was treated as a 'merit' and 'non-complying' development application, the council did not undertake a site inspection, and it was evident that it had not appropriately considered the overshadowing effects of the proposed development.

Outcome and opinion

It was my opinion that the council had not undertaken a proper inquiry and inspection with regard to the location of the complainant's habitable living rooms. The report provided inconsistent and unclear advice to the DAP about the impact of the proposed development on those rooms. Planning consent was granted and as a consequence, the proposed development will more than likely significantly reduce the heat and light from the winter sun to the living areas of the complainant's home.

It was my opinion that the council's administrative process could be improved in relation to the assessment of proposed development siting and setback, overshadowing issues, and the impact of reduced winter heat and light on adjoining properties.

I recommended that the council should undertake a review of its internal control processes to ensure that proper inspection, assessment and reporting is carried out in similar situations in the future. The council advised me that a development checklist would be devised to better inform and advise planning staff in relation to overlooking or overshadowing issues.

Local Government **Complaints Received 1 July 2009 to 30 June 2010**

	Received	%	Population 30 June 2009	Complaints/10,000 pop'n
Adelaide Hills Council	28	4.1%	39 852	7.0
Alexandrina Council	8	1.2%	23 160	3.4
Berri Barmera Council	5	0.7%	11 240	4.4
City of Adelaide	46	6.7%	19 444	23.6
City of Burnside	23	3.4%	44 300	5.2
City of Charles Sturt	50	7.3%	106 995	4.7
City of Holdfast Bay	14	2.0%	35 683	3.9
City of Mitcham	26	3.8%	65 315	4.0
City of Norwood, Payneham & St Peters	7	1.1%	36 128	1.9
City of Onkaparinga	39	5.7%	160 404	2.4
City of Playford	33	4.8%	77 469	4.2
City of Port Adelaide Enfield	24	3.5%	111 455	2.2
City of Port Lincoln	4	0.6%	14 593	2.7
City of Prospect	15	2.2%	20 910	7.2
City of Salisbury	28	4.1%	130 022	2.1
City of Tea Tree Gully	30	4.4%	100 155	3.0
City of West Torrens	20	2.9%	55 620	3.6
Clare and Gilbert Valleys Council	7	1.1%	8 743	8.0
Corporation of the City of Campbelltown	5	0.7%	49 281	1.0
Corporation of the City of Marion	23	3.4%	84 142	2.7
Corporation of the City of Unley	19	2.8%	38 465	4.9
Corporation of the City of Whyalla	8	1.2%	23 028	3.5
Corporation of the Town of Gawler	13	1.9%	20 730	6.3
Corporation of the Town of Walkerville	1	0.1%	7 338	1.4
District Council of Barunga West	2	0.3%	2 631	7.6
District Council of Ceduna	4	0.6%	3 797	10.5
District Council of Coober Pedy	1	0.1%	1 913	5.2
District Council of Coorong	3	0.4%	5 825	5.1
District Council of Elliston	5	0.7%	1 169	42.8
District Council of Franklin Harbour	3	0.4%	1 355	22.1
District Council of Grant	6	0.9%	8 652	6.9
District Council of Kimba	1	0.1%	1 125	8.9
District Council of Lower Eyre Peninsula	2	0.3%	4 820	4.1
District Council of Loxton Waikerie	1	0.1%	12 043	0.8
District Council of Mallala	3	0.4%	8 385	3.6
District Council of Mount Barker	17	2.5%	29 864	5.7
District Council of Mount Remarkable	2	0.3%	2 951	6.8
District Council of Orroroo/Carrieton	1	0.1%	938	10.7
District Council of Peterborough	6	0.9%	1 973	30.4
District Council of Renmark Paringa	2	0.3%	9 882	2.0
District Council of Robe	1	0.1%	1 480	6.7
District Council of Streaky Bay	4	0.6%	2 181	18.3
District Council of the Copper Coast	8	1.2%	12 901	6.2
District Council of Tumby Bay	3	0.4%	2 757	10.9
District Council of Yankalilla	5	0.7%	4 577	10.9
District Council of Yorke Peninsula	11	1.6%	11 736	9.4
Kangaroo Island Council	4	0.6%	4 612	8.7
Kingston District Council	3	0.4%	2 469	12.1
Light Regional Council	13	1.9%	13 658	9.5
Mid Murray Council	8	1.2%	8 511	9.4
Naracoorte Lucindale Council	3	0.4%	8 489	3.5
Northern Areas Council	9	1.3%	4 866	18.5
Port Augusta City Council	8	1.2%	14 669	5.4
Port Pirie Regional Council	7	1.1%	18 076	3.9
Regional Council of Goyder	3	0.4%	4 285	7.0
Roxby Council	1	0.1%	4 484	2.2
Rural City of Murray Bridge	11	1.6%	19 402	5.7
Southern Mallee District Council	3	0.4%	2 189	13.7
Tatiara District Council	1	0.1%	7 118	1.4
The Barossa Council	21	3.1%	22 514	9.3
The Flinders Ranges Council	3	0.4%	1 784	16.8
Victor Harbor City Council	7	1.1%	13 608	5.1
Wakefield Regional Council	7	1.1%	6 756	10.4
Wattle Range Council	6	0.9%	12 554	4.8
Total	685	100%		

	Other	Adelaide Hills Council	City of Adelaide	City of Charles Sturt	City of Onkaparinga	City of Tea Tree Gully	Total	Percentage
Access to information	2						2	0.3%
Administration	34	4	7	1	5	5	56	8.7%
Administration/general management of Council	68	4	4	9	7	4	96	14.9%
Administrative practices/Policies	44	2	3	3	3	4	59	9.1%
Advice	1				1		2	0.3%
Animals	8			1	1	1	11	1.7%
Approvals (permits, licences, registrations)	1				1		2	0.3%
Citizens' rights	1						1	0.2%
Communication					1	1	2	0.3%
Complaint handling/Conflict of interest	4						4	0.6%
Complaint handling/Delay	2				1		3	0.5%
Complaint handling/Inadequate processes	14		1	1	1		17	2.6%
Complaint handling/Inadequate reasons	5	1	1				7	1.1%
Complaint handling/Inadequate remedy	7		1		1		9	1.3%
Complaint handling/Wrong conclusion	1				1		2	0.3%
Conduct/Discourtesy	1						1	0.2%
Conduct/Misconduct	5				1		6	0.9%
Correspondence/Communications/Records/Access	3				1		4	0.6%
Correspondence/Communications/Records/Delay/No response	4	1					5	0.8%
Correspondence/Communications/Records/Incorrect	4				1		5	0.8%
Correspondence/Communications/Records/Wrongful disclosure of information	2						2	0.3%
Drains/sewers	5	1					6	0.9%
Duty of care	2						2	0.3%
Fees/Charges/Levies	9			1			10	1.5%
Financial issues	9					1	10	1.5%
Financial/Procurement/Facilities/Compensation/Damage/ Property lost/Damaged	1						1	0.2%
Financial/Procurement/Facilities/Debts/Incorrect calculation	1						1	0.2%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Building	2						2	0.3%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Drainage	1		1				2	0.3%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Recreational facilities	2						2	0.3%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Roads/Streets	6	1					7	1.1%
Financial/Procurement/Facilities/Other fees and charges	1						1	0.2%
Financial/Procurement/Facilities/Procurement by agencies/ Decisions	1						1	0.2%
Financial/Procurement/Facilities/Procurement by agencies/Tenders	1						1	0.2%
Financial/Procurement/Facilities/Rates/Administration	3						3	0.5%
Financial/Procurement/Facilities/Rates/Amount	1						1	0.2%
Financial/Procurement/Facilities/Rates/Recovery action				1			1	0.2%
Funding	1						1	0.2%
Health	11			3			14	2.1%
Improper release of documents	2		1				3	0.5%
Land use	2						2	0.3%
Maintenance	9		1				10	1.5%
Officer misconduct	4						4	0.6%
Ordinances, Regulations, By-laws	1		1		1		3	0.5%
Other	1						1	0.2%
Parking	15	1	15	5	1	2	39	6.0%
Planning and development	81	7	1	8	3	4	104	16.1%
Rates and charges	20	1		1	1		23	3.5%

Records keeping	1						1	0.2%
Regulation and enforcement/Animals/Excessive action	3	1		1			5	0.8%
Regulation and enforcement/Animals/Failure to act on complaints	2					1	3	0.5%
Regulation and enforcement/Building/Failure to enforce condition	1						1	0.2%
Regulation and enforcement/Building/Failure/Delay to issue permit	1						1	0.2%
Regulation and enforcement/Building/Unreasonable enforcement				1			1	0.2%
Regulation and enforcement/Environmental Protection/Failure to action on complaints		1					1	0.2%
Regulation and enforcement/Local laws/Failure to enforce	1						1	0.2%
Regulation and enforcement/Local laws/Improper/Inappropriate	1						1	0.2%
Regulation and enforcement/Local laws/Unreasonable enforcement	2			2			4	0.6%
Regulation and enforcement/Nuisances/Failure to action on complaints	1					1	2	0.3%
Regulation and enforcement/ Parking/Failure to enforce restrictions	2						2	0.3%
Regulation and enforcement/ Parking/Unreasonable enforcement	3	1	3	2			9	1.3%
Regulation and enforcement/Planning & Development/ Failure to enforce condition	4						4	0.6%
Regulation and enforcement/Planning & Development/ Failure to notify	4		1		1		6	0.9%
Regulation and enforcement/Planning & Development/ Failure/ Delay to issue permit					3		3	0.5%
Regulation and enforcement/Planning & Development/ Inappropriate development allowed	14	1		1	1		17	2.6%
Regulation and enforcement/Planning & Development/ Unreasonable conditions imposed	3	1			2		6	0.9%
Regulation and enforcement/Public health/Failure to act on complaints	2			1			3	0.5%
Regulation and enforcement/Public health/Unreasonable conditions imposed			2				2	0.3%
Regulation and enforcement/Public health/Unreasonable enforcement					1		1	0.2%
Roads	6			2			8	1.2%
Tenders	1						1	0.2%
Transport					1		1	0.2%
Trees	4		1		1	2	8	1.2%
Total	459	28	44	44	42	26	643	100%

Note: Issues which appear as shaded lines relate to complaints finalised before 15 March 2010, when the new case management system commenced operation. Those appearing in unshaded lines relate to complaints finalised after that date. The unshaded issues will appear in future reports.

Local Government **Complaints Completed 1 July 2009 to 30 June 2010**

	Completed	%	Population 30 June 2009	Complaints/10,000 pop'n
Adelaide Hills Council	25	3.5%	39 852	6.3
Alexandrina Council	11	1.6%	23 160	4.7
Berri Barmera Council	5	0.7%	11 240	4.4
City of Adelaide	48	6.8%	19 444	24.7
City of Burnside	22	3.1%	44 300	5.0
City of Charles Sturt	49	7.0%	106 995	4.6
City of Holdfast Bay	14	2.0%	35 683	3.9
City of Mitcham	20	2.8%	65 315	3.1
City of Norwood, Payneham & St Peters	8	1.1%	36 128	2.2
City of Onkaparinga	38	5.4%	160 404	2.4
City of Playford	33	4.7%	77 469	4.2
City of Port Adelaide Enfield	23	3.3%	111 455	2.1
City of Port Lincoln	6	0.9%	14 593	4.1
City of Prospect	15	2.1%	20 910	7.2
City of Salisbury	28	4.0%	130 022	2.1
City of Tea Tree Gully	30	4.3%	100 155	3.0
City of West Torrens	24	3.4%	55 620	4.3
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District Council of Coober Pedy	1	0.1%	1 913	5.2
District Council of Coorong	3	0.4%	5 825	5.1
District Council of Elliston	4	0.6%	1 169	34.2
District Council of Franklin Harbour	3	0.4%	1 355	22.1
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District Council of Kimba	1	0.1%	1 125	8.9
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District Council of Loxton Waikerie	2	0.3%	12 043	1.7
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Tatiara District Council	1	0.1%	7 118	1.4
The Barossa Council	26	3.7%	22 514	11.5
The Flinders Ranges Council	3	0.4%	1 784	16.8
Victor Harbor City Council	9	1.3%	13 608	6.6
Wakefield Regional Council	6	0.9%	6 756	8.9
Wattle Range Council	9	1.3%	12 554	7.2
Total	705	100%	15672	4.4

Local Government **Complaints Completed: Outcome 1 July 2009 to 30 June 2010**

	Other	City of Adelaide	City of Charles Sturt	City of Onkaparinga	City of Playford	City of Tea Tree Gully	Total	Percentage
Advice given	232	20	24	15	15	13	319	45.2%
Alternate remedy available with another body	9		1	1	1		12	1.7%
Declined	22	4	2	3	3	3	37	5.3%
Declined/Trivial, vexatious, etc	3						3	0.4%
Declined/Withdrawn by complainant	1						1	0.1%
Full investigation	15	1		2		1	19	2.7%
Not substantiated	29	9	4	5	3	1	51	7.3%
Ombudsman comment warranted	1						1	0.1%
Out of Jurisdiction	5		1			1	7	1.0%
Out of Jurisdiction/Judicial body	2						2	0.3%
Preliminary investigation	90	8	9	5	4	6	122	17.3%
Referred back to agency	56	3	3	4	4	1	71	10.1%
Resolved with agency cooperation	17	2	2	2		1	24	3.4%
S25 Finding/Mistake of law or fact	1						1	0.1%
S25 Finding/Unlawful	1		1				2	0.3%
S25 Finding/Unreasonable	6						6	0.9%
Withdrawn by complainant	17	1	2	1	3	3	27	3.8%
Total	507	48	49	38	33	30	705	100%
	71.9%	6.8%	7.0%	5.4%	4.7%	4.2%	100%	

Note: See Appendix 2 for definitions of outcomes

The agency accepted that the delay in addressing the issues raised by the complaint was unreasonable.

Adelaide Cemeteries Trust

Unreasonable delay in repairing headstone

Complaint summary

I received a complaint concerning the agency's delay in repairing a damaged headstone.

The agency had contacted the complainant to inform him that the Burial Grant registered in his name had expired, and was under review as part of an ongoing redevelopment of the cemetery. Although the complainant had an opportunity to renew the Burial Grant over the site, he chose not to renew it. Instead, he made a request to the agency to take possession of the headstone.

The agency advised the complainant that he could have the headstone when it was removed from the cemetery site. However, when the headstone was removed it was damaged.

Ombudsman investigation

The agency confirmed that the headstone was damaged when it was removed, and was in storage at the cemetery. No action had been taken by the agency due to staff changes, and it was unaware that the matter had not been resolved.

Outcome and opinion

The agency accepted that the delay in addressing the issues raised by the complaint was unreasonable. It acknowledged that the damage caused to the headstone had occurred during its removal from the cemetery site. The agency agreed to repair the headstone at no cost to the complainant.

Courts Administration Authority

Unreasonable charge for transcription and a review of processes undertaken when a victim of crime accesses court documents.

Complaint summary

The complainant sought access from the Courts Administration Authority (**the CAA**) to a transcript of sentencing remarks but was asked to pay a 'per page' fee. The case involved a prosecution arising from the death of the complainant's grandfather, and the complainant believed that the fees should be waived as he was a victim of crime under the *Victims of Crime Act 2001*. However, he had not previously registered an interest and did not tender a Victim Impact Statement to the court.

Ombudsman investigation

My office made a determination that the CAA was legally entitled to charge fees should it choose to do so, and therefore there was no administrative error. The complainant was not happy with this determination and asked my office to conduct an internal review.

I spoke with the Chief Executive of the CAA and the Commissioner for Victims Rights about the circumstances of the complaint, in an endeavour to negotiate an appropriate outcome.

Outcome and opinion

The internal review confirmed that the court official who addressed the complainant's requests acted in accordance with her legal obligations. In addition, the complainant did need to be identified as a victim in the proceedings in order to have his fees waived.

However, the circumstances surrounding this complaint led me to conclude that the practices in accordance with which the administrative act was done should be varied. Specifically, if a person claiming to be a victim of crime seeks access to court documents, they should in the first instance be referred to the Commissioner for Victims Rights, who is often able to arrange an appropriate outcome.

The CAA created a procedural instruction for staff working in the Magistrates Courts, which directed court employees to refer such requests to the Commissioner for Victims Rights.

Courts Administration Authority - Office of the Sheriff

Improper disposal of a motor vehicle

Complaint summary

The complainant was the owner of a motor vehicle, which was used by another person in the commission of an offence. On conviction of the person, the court ordered that the Sheriff seize and dispose of the vehicle under the *Criminal*

Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007.

The complainant's solicitor subsequently brought an application for rehearing before the court, with a view to having the forfeiture order revoked. By the time the application had been heard by the court, the vehicle had been disposed of by the sheriff.

Ombudsman investigation

I considered whether the complainant initially had been properly notified of the forfeiture application to the court, and why the sheriff had disposed of the vehicle when the rehearing application had not been determined by the court.

Outcome and opinion

I did not find evidence of any failure in meeting the notification requirements under the Act. However, it appeared to me that there was a collective failure by the complainant and the parties to the forfeiture application to advise the court that the vehicle was owned by someone other than the offender, before the forfeiture order was made.

On the basis that the order had been made, I concluded that the sheriff's seizure of the vehicle was lawful.

The subsequent efforts of the complainant to have the order revoked failed because there was no proper process in place to ensure that when the application for rehearing was lodged, the sheriff was informed. This failure was compounded when the court proceeded to revoke the forfeiture order, while being unaware of the fact that the vehicle had already been disposed of.

I recommended to the State Courts Administration Council that consideration should be given to an *ex gratia* payment to the complainant for the loss of his vehicle, and that a process should be in place whereby the Sheriff is informed of any application to a court to vary or disturb an order relating to the seizure of a vehicle.

Environment Protection Authority

Unreasonable issue of an environmental authorisation

Complaint summary

This complaint arose from the operation of a chemical fertiliser distribution facility under an emergency authorisation issued by the Environment Protection Authority (**the EPA**), initially for a 3 week period to permit a shipment of material to be received. A full environmental authorisation was subsequently issued.

The complainants objected to the issue of the emergency authorisation, and stated that the facility had operated outside its terms whilst it was in effect. They also alleged that the environmental authorisation should not have been issued because some Development Plan Consent conditions imposed by the local council had not been met. Some of these conditions in fact had been determined by the EPA through the referral and consultation process.

Ombudsman investigation

My investigation firstly considered whether it was reasonable for the EPA to issue the emergency authorisation. The EPA noted that as it was intended to cover a temporary situation, it did not include every condition for addressing environmental impacts, and that the EPA still had other civil enforcement options available to it in the event they were needed.

The EPA took the view that not allowing the shipment of material to be transported would not only result in financial loss for the operator, but potential loss of property for the agricultural industry that heavily relies on the receipt of the material.

I also considered whether the full environmental authorisation should have been issued whilst the conditions of the Development Plan Consent remained unmet. In my view there was no obligation to issue an environmental authorisation, although this was apparently asserted by the EPA to the council.

Further, to issue an environmental authorisation whilst the Development Plan Consent conditions remained unmet potentially undermined the regulatory authority of the council. In my view it is preferable (for both regulators and proponents) that a consistent and mutually supportive approach to the enforcement of development conditions (whether contained in a Development Plan Consent, or in an environmental authorisation) is taken by the EPA and the relevant council.

Outcome and opinion

I accepted that on the facts it was reasonably open to the EPA to issue an emergency authorisation, but that it would have been helpful if the EPA had recorded the reasons upon which the issue of the authorisation was based.

I recommended that the EPA should develop an internal policy for dealing with applications for emergency authorisations, incorporating a risk assessment of the threats to life, environment and property, and an analysis of why circumstances of urgency exist. The reasons for the decision to grant or deny the authorisation, set out in accordance with this policy, should be recorded in the file.

In relation to the full environmental authorisation, I considered that whilst it is up to a council to enforce the conditions of a Development Plan Consent, the EPA should not issue an environmental authorisation whilst a development is not substantially complying with conditions required in a Development Plan Consent.

The EPA stated that it agrees in principle with this position, but believes that:

'…..it is not possible to apply a hard and fast rule as in practice the decision will always depend on the particular facts of the case. There are occasions where the granting of an authorisation enables the EPA to manage or prevent potential harm greater than that which is likely as a result of a condition not being met.'

I accepted that this was a reasonable position for the EPA to take.

Environment Protection Authority

Unreasonable handling of pollution problem

Complaint summary

The complainants were owners of a houseboat which was located at a site on the River Murray. They complained about the actions of the EPA in relation to its investigation of their concerns about water pollution in the river near their houseboat. The complainants had also sought advice and assistance from the Environmental Defenders Office.

Ombudsman investigation

I received a copy of an internal EPA report on its handling of the complaint. The report acknowledged that there were a number of deficiencies in the way the agency had communicated with the complainants, and the untimely manner in which their complaint was investigated.

The EPA's Chief Executive had written to the complainants and provided them with an apology, and information about the new procedures that the agency had put in place to deal with future reports of pollution and other concerns from the public.

As a gesture of good-will, the EPA compensated the complainants for costs incurred in analysing water samples collected in the vicinity of their houseboat. It also gave careful consideration to whether any further scientific testing of water near the houseboat should be undertaken. It decided that further testing would not be carried out at that stage, for several reasons which were clearly explained in a letter to the complainants.

The EPA provided to complainants, the name and contact details of a staff member who could discuss any further concerns the complainants may have had about the river pollution.

Outcome and opinion

In my opinion, the EPA properly reviewed the handling of the complaint and took all reasonable and appropriate steps to instigate new procedures to ensure more appropriate practices in the future, as well as providing the name of an appropriate contact person should the complainants wish to discuss their concerns further.

I advised the complainants that in my view it was not appropriate for me to further investigate their concerns or make any recommendations to the EPA.

Legal Practitioners Conduct Board

Failure to provide adequate reasons for a decision

Complaint summary

The complainant alleged to the Legal Practitioners Conduct Board (**the Board**) that he had been overcharged by a legal practitioner. One of the Board's employed solicitors investigated the matter prior to reporting to the Director of the Board. The employed solicitor's report ran to three pages and contained, in essence, the reasons for the outcome. Based upon the report, the Director wrote to the complainant and, after clarifying one small matter, advised of the delegated decision that:

- there is no evidence of unsatisfactory or unprofessional conduct on the part of the practitioner; and that
- there was no overcharging in this matter.

The complainant sought review by the lay observer, but to no avail. Subsequently, the complainant made an application under the FOI Act for documents about the matter.

Relevantly, the Director of the Board determined that the employed solicitor's report to the Director was exempt under clause 10 of Schedule 1 to the FOI Act (documents subject to legal professional privilege).

The complainant then contacted my office about the level of reasoning given by the Board for its decision. My office clarified that the complainant was not seeking an external review under the FOI Act.

Ombudsman investigation

It appeared to me that very little of the detail in the employed solicitor's report had been reproduced in the Director's letter to the complainant.

The Board agreed that its initial reasoning as offered to the complainant in the Director's letter was a little brief, and an alteration was offered.

Outcome and opinion

Whilst the complainant was still unhappy as the ultimate result was not in his favour, I was satisfied that initial shortcomings were quickly rectified by the Board and an appropriate level of reasoning had now been given. I did not consider the actual decision unreasonable or unlawful. I disagreed with the complainant that this matter alone gave rise to any systemic issues.

State Procurement Board

Unreasonable tender process

Complaint summary

The complainant was a representative body for a number of businesses that submitted tenders for the whole of government contract to provide specialist services. The complaint was that the process was unfair due to its onerous nature, and that there had been a significant delay in the decision making process

Ombudsman investigation

I conducted a preliminary investigation. I noted that there had been discussions with the complainant body before the tender process began, and a methodology and evaluation plan had been developed by the agency.

Potential tenderers had been given information to enable them to better understand the tender and evaluation process, and were given an opportunity to raise concerns.

A number of tenderers were successful in securing contracts, but one unsuccessful tenderer complained to the agency about the process. This resulted in some aspects of the evaluation being recalculated, and the agency engaged an external consultant to scrutinise what had occurred through the conduct of a 'shadow' evaluation of the tenders.

Although some departures from the evaluation plan were identified, this did not affect the list of successful tenderers.

Outcome and opinion

Although government tender processes can on occasion be onerous for businesses to respond to, in my view this particular process was not so onerous so as to deter potential applicants.

I concluded that the advertising and dissemination of information was appropriate and comprehensive, and did not favour one applicant over any other. I commented about the need for the department in any future tender process, to consider the timing and content of information to be conveyed to current service providers before a new tender process begins.

The decision by the Board, on receipt of a complaint, to conduct the recalculations and later the shadow evaluation of the process was in my opinion prudent and appropriate. In my view it is important for agencies conducting tender processes to clearly and accurately record any departure from an evaluation plan, and the reasons for the departure. In this case, the Board's actions ensured that an error was picked up through the re-evaluation process, and I reiterated the importance of this as a control mechanism.

SA Water

Unreasonable financial demand

Complaint summary

The complainant had an SA Water easement on his property. As part of the development of the property he organised for a contractor to erect a retaining wall. Whilst this was taking place the easement pipe was damaged.

That same afternoon a crew from United Water attended and performed some remedial work, but advised that the main work would have to be performed the next day. The following morning another crew attended and fixed the pipe.

The complainant was sent a bill from SA Water for the work which totalled over $970. The complainant questioned whether he was correctly billed. He raised his concerns with SA Water and his account was not reduced. Principally, the complainant thought that he was charged for work other than the damage caused by the contractor and that the second crew had incorrectly charged for time when they were not in attendance.

Ombudsman investigation

My office established that the charges were supported by records of attendance times, and I concluded that they were properly incurred for the work performed on the broken pipe caused by the contractor.

However, in view of the dispute in attendance times, the agency decided to reduce the charges relating to the attendance time of the second crew by one hour. In addition, it also waived charges for one of the replacement pipes. Therefore the complainant's total account was reduced by $290.

Outcome and opinion

An adjusted account was provided to the complainant, based on a goodwill gesture by the agency. This fact was explained to the complainant, who was satisfied with the outcome.

South Australian Certificate of Education (SACE) Board

Failure to deal with special provisions application for year 12 exams

Complaint summary

The complaint related to the amount of time taken by the SACE Board to process a Special Provisions Application, seeking permission for the complainant's daughter (**the student**) to use a word processor and be given extra time for her Year 12 exams. The complaint also argued that the Board's acceptance of the Special Provisions Application, submitted by the student's school after the Board's stated due date, was procedurally unfair.

The complainant advised that a copy of the Board's decision, that the student 'is able to participate in assessment (for all of her Year 12 subjects) without the need for special provisions', was received two weeks before the student's exams started. The complainant stated that the school had allowed the student to use a word processor for written assessments conducted over the previous two years and the timing of SACE's advice of its decision left her inadequate time to prepare to take her exams without special provisions.

Ombudsman investigation

Information was sought from the Board in relation to both issues, i.e. whether the time taken to process the application was unreasonable and whether the acceptance of the late application was procedurally unfair.

In relation to the first issue, information obtained from the Board showed that:

- the application was lodged by the school on 12 June 2009
- the Board wrote to the school on 25 June, stating that it could not process a number of applications, including the student's, because they did not include the required evidence. In the student's case, the missing evidence was a handwritten essay
- The school wrote to the Board on 7 September seeking information about applicants for whom the Board still sought such essays
- the Board replied the same day and the school provided a number of handwritten essays, including one by the student
- the Board received the essays on 10 September and proceeded to assess the student's application, advising the school of its decision in writing on 15 October.

In the course of the investigation, the school advised the complainant that it had no record of the 25 June letter. Nonetheless, the Board provided copies of email correspondence with the school, dated 28 July, 19 August and 21 August that appeared to refer to the June letter.

In relation to the second issue, the complainant asserted that the Board had clearly advised schools and students that the due date for Special Provisions Applications for pre-existing conditions, was the end of Term 1 (9 April). Therefore, she argued, the Board should have rejected the late application and that this would have given the student some months to prepare to take her Year 12 exams without special provisions.

...I formed the view that the Board had not acted unlawfully, unreasonably, or wrongly in dealing with this matter.

Based on information provided by the Board, the justification for the due date is stated on *SACE Information Sheet 37/09, Special Provisions - External Assessment Variations*:

> In this way the student will have an opportunity to work during the year under the same conditions as have been approved for a final external examination. (SACE Operations Manual 2009, p. 169)

Outcome and opinion

On the first issue, it appeared that, following receipt of the subject Special Provisions Application, the Board followed its normal assessment processes, as described in its *Special Provisions in Curriculum and Assessment Policy and its Operations Manual 2009*, published on its website.

Based on the information provided, it appeared that the delay in the Board starting its assessment of the application was due to the time taken by the school to provide all of the required evidence stipulated in the Policy. According to the Board, the five weeks taken to complete its assessment was about normal.

On the second issue, the Board advised that there is no statement about penalties or processes for late Special Provisions Applications in its policies or procedures. The Board also advised that a high proportion of such applications are lodged and accepted after the due date. A rejection of the student's application by the Board, as suggested by the complainant, may have been perceived as unfair if the Board's general practice is to accept late applications. The student may also have perceived a rejection by the Board as unfair, on the grounds that she signed the application form in early December 2008, six months before the school submitted it.

In conclusion, I formed the view that the Board had not acted unlawfully, unreasonably, or wrongly in dealing with this matter.

A point of interest in this complaint was that the school in question appeared to have played a critical role in the application process. However, it is a private school and therefore the Ombudsman is not empowered to investigate its administrative acts. This point was confirmed to the complainant.

South Australian Certificate of Education (SACE) Board

Unreasonable penalty on student

Complaint summary

The complainant wrote to my office on behalf of his daughter, a minor doing year 11 at a college. The daughter had received a grade which was reduced by 50% due to another student plagiarising her work. The complainant was of the view that procedural fairness and natural justice had not been afforded since the child had not been accompanied with a guardian, support worker or parent when being interviewed about the possible plagiarism.

Similarly, the complainant suggested that the college had failed to maintain appropriate documentation when deciding to deduct the marks of the student.

Ombudsman investigation

My office sought versions of the events from the SACE Board and the college. The *SACE Board of South Australia Act 1983* and relevant SACE policies were also considered in order to determine the correct procedure to be used by the college in this matter. In addition, the complainant and the agency were provided with an opportunity to comment on a revised provisional views report created by my office.

My office also sought legal advice from the Crown Solicitor's Office in order to determine what parts, if any, of this complaint could be investigated under the jurisdiction of the Ombudsman Act.

Outcome and opinion

My predecessor held the provisional view that this complaint was fully within jurisdiction. I sought legal advice about my jurisdiction to investigate the complaint and provided a revised provisional view to the complainant and the agency.

I formed the view that only the actions of the SACE Board, and not the college, were within my jurisdiction. This is because an instrument delegating a statutory authority must be 'clear and unequivocal'.

...there was no evidence to show the complainant had been denied procedural fairness.

The SACE Board had delegated the responsibility for interpreting the Supervision and Verification of Students' Work and the Breaches of Rules policies to the college. However, in this case I found that the documents which the SACE Board relied upon as instruments of delegation were not 'clear and unequivocal' delegations of its statutory power.

I was unable to investigate the actions of the college, and I had no evidence of any administrative error by the SACE Board. Accordingly I was of the view that further investigation could not be justified.

University of Adelaide

Lack of procedural fairness

Complaint summary

The complainant had for a number of years been undertaking a course of study to obtain a doctorate. He submitted a thesis in 2005 (which subsequently had to be resubmitted) but ultimately failed to obtain the level of academic performance to justify the awarding of the doctorate. The complainant exhausted the various avenues available to him through the university complaint and appeal mechanisms.

Ombudsman investigation

I conducted a preliminary investigation. The complainant sought to raise issues of racial discrimination that were beyond my jurisdiction. The complainant sought to rely on changes to the procedures in applying for the doctorate, and alleged that the university failed to strictly comply with the procedures in place at the relevant time. This included the selection of the examiners to assess the thesis, and the approach to be taken in the event of there not being a consensus among the examiners. The complainant was also critical of the various supervisors assigned to assist in the development of the thesis.

The complainant provided comprehensive documentation outlining his communications with the university. I considered the reports of the various examiners involved in assessing the thesis, and records of the university relating to the various appeal processes that the complainant used.

Outcome and opinion

The examiners who marked the thesis at first instance were unanimous that it needed to be revised and resubmitted. In doing so, the complainant in my view failed to have proper regard to the comments made by the examiners, or the assistance provided by his supervisors.

As a result of the range of assessments made by the examiners, the university appointed a third examiner, and the complainant expressed concerns about this examiner's role. He stated that he was subsequently told that the examiner was in fact discharging the role of an arbitrator as opposed to an examiner per se. In my opinion there was no evidence to support the assertion that the person functioned as an arbitrator.

The university's Students Appeal Committee found that the complainant's appeal was lacking in substance, and there was no evidence to show the complainant had been denied procedural fairness. I too formed an opinion that there had been no administrative failure on the part of the university in not awarding the doctorate.

Other Authorities	Complaints Received	1 July 2009 to 30 June 2010
Aboriginal Lands Trust	1	0.2%
Adelaide Cemeteries Authority	3	0.5%
Adelaide Health Service Inc	3	0.5%
Adelaide Metro	3	0.5%
Central Northern Adelaide Health Service	74	12.9%
Children, Youth & Women's Health Service	5	0.8%
Commissioner for Equal Opportunity	4	0.7%
Coroner	6	1.0%
Country Fire Service	3	0.5%
Country Health SA	6	1.0%
Courts Administration Authority	24	4.2%
Dental Board of South Australia	10	1.8%
Department of Health	4	0.7%
Development Assessment Commission	2	0.4%
Director of Public Prosecutions	2	0.4%
Domiciliary Care SA	2	0.4%
Drug & Alcohol Services SA	3	0.5%
Eastern Mental Health Services	1	0.2%
Flinders University Council	7	1.2%
Guardianship Board	16	2.8%
Health & Com Services Complaints Commissioner	39	6.8%
HomeStart	7	1.2%
Institute of Medical and Veterinary Science	1	0.2%
Land Management Corporation	2	0.4%
Legal Practitioners Conduct Board	5	0.8%
Legal Services Commission	14	2.4%
Liquor & Gambling Commissioner	3	0.5%
Lotteries Commission	1	0.2%
Medical Board of SA	34	6.0%
Motor Accident Commission	14	2.4%
Mt Gambier & Districts Health Service Inc	1	0.2%
North Western Adelaide Health Service	2	0.4%
Northern Adelaide Waste Management Authority	1	0.2%
Nurses Board of SA	5	0.8%
Nursing & Midwifery Board South Australia	4	0.7%
Office of Consumer & Business Affairs	39	6.8%
Optometry Board	1	0.2%
Pika Wiya Health Advisory Council	1	0.2%
Public Advocate	7	1.2%
Public Trustee	79	13.8%
Repatriation General Hospital	1	0.2%
Residential Tenancies Tribunal	5	0.8%
RSPCA Inspectorate	7	1.2%
SA Ambulance Service	20	3.5%
SA Community Housing Authority	7	1.2%
SA Psychological Board	1	0.2%
SACE Board of SA	3	0.5%
Sheriff	1	0.2%
South Australian Dental Service	2	0.4%
South Australian Tertiary Admissions Centre	3	0.5%
South Australian Tourism Commission	1	0.2%
Southern Adelaide Health Service	16	2.8%
Super SA Board	12	2.1%
TransAdelaide	4	0.7%
University of Adelaide Council	11	1.9%
University of South Australia Council	19	3.3%
Veterinary Surgeons Board	1	0.2%
WorkCover Corporation	19	3.3%
WorkCover Ombudsman	1	0.2%
Total	573	3.7%

Other Authorities **Complaints Received: Issues 1 July 2009 to 30 June 2010**

	Other	Central Northern Adelaide Health Service	Health & Community Services Complaints Commissioner	Medical Board of SA	Office of Consumer & Business Affairs	Public Trustee	Total	Percentage
Access to educational services	1						1	0.2%
Access to information		3					3	0.6%
Access to treatment	10	14	1				25	5.2%
Administration	76	9	11	16	15	19	146	30.3%
Administrative practices/Policies	67	7	8	5	12	19	118	24.5%
Animals	1						1	0.2%
Citizens' rights						1	1	0.2%
Communication	2					1	3	0.6%
Complaint handling/Delay	4		1		1	3	9	1.9%
Complaint handling/Inadequate processes	11		1	6		1	19	4.0%
Complaint handling/Inadequate reasons	4		1	2	3	2	12	2.5%
Complaint handling/Inadequate remedy	1		1	1			3	0.6%
Complaint handling/Wrong conclusion	3		2	1	3		9	1.9%
Conduct/Discourtesy	1		1	1		1	4	0.8%
Correspondence/Communications/Records/ Delayed/No response	4					2	6	1.3%
Correspondence/Communications/Records/ Withholding of information						1	1	0.2%
Correspondence/Communications/Records/Wrongful disclosure of information						1	1	0.2%
Daily routine		2					2	0.4%
Duty of care	6	3					9	1.9%
Employment	1						1	0.2%
Fees/Charges/Levies	8						8	1.7%
Financial assistance	1					1	2	0.4%
Financial issues	11					5	16	3.4%
Financial/Procurement/Facilities/Compensation/ Damage/ Property lost/Damaged	1						1	0.2%
Financial/Procurement/Facilities/Debts	2					1	3	0.6%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Sale/Lease	1						1	0.2%
FOI Practices and procedures	1						1	0.2%
Funding	1						1	0.2%
Health	1						1	0.2%
Housing	2						2	0.4%
Improper release of documents						1	1	0.2%
Medical	1	5	1				7	1.5%
Officer misconduct	1	1				1	3	0.6%
Parking		1					1	0.2%
Patient rights		3					3	0.6%
Planning and development	1						1	0.2%
Quality of treatment	10	5		1			16	3.4%
Rates and charges	1						1	0.2%
Records management					2	2	4	0.8%
Regulation and enforcement/Enforcement action/Unfair	1						1	0.2%
Regulation and enforcement/Enforcement action/Excessive	1						1	0.2%
Regulation and enforcement/ Infringements/Inadequate review	2						2	0.4%
Regulation and enforcement/Fees	2						2	0.4%
Regulation and enforcement/Licensing/ Conditions					1		1	0.2%
Regulation and enforcement/Licensing/Refusal	1				1		2	0.4%
Services	2					1	3	0.6%
Service Delivery/Abuse in care	1						1	0.2%
Service Delivery/Assessment			1				1	0.2%
Service Delivery/Eligibility for services	1						1	0.2%
Service Delivery/Failure to act/Provide	1					5	6	1.3%

Service Delivery/Fees and charges	2						2	0.4%
Service Delivery/Quality					1	2	3	0.6%
Superannuation	4						4	0.8%
Transfers		1					1	0.2%
Workers compensation	4						4	0.8%
Total	254	54	29	33	39	70	482	100%

Note: Issues which appear as shaded lines relate to complaints finalised before 15 March 2010, when the new case management system commenced operation.

Other Authorities	**Complaints Completed**	**1 July 2009 to 30 June 2010**
Aboriginal Lands Trust	1	0.2%
Adelaide Cemeteries Authority	4	0.7%
Adelaide Metro	2	0.4%
Central Northern Adelaide Health Service	73	13.2%
Children, Youth & Women's Health Service	6	1.1%
Commissioner for Equal Opportunity	3	0.5%
Coroner	4	0.7%
Country Fire Service	2	0.4%
Country Health SA	6	1.1%
Courts Administration Authority	26	4.7%
Dental Board of South Australia	10	1.8%
Department of Health	4	0.7%
Development Assessment Commission	2	0.4%
Director of Public Prosecutions	2	0.4%
Domiciliary Care SA	2	0.4%
Drug & Alcohol Services SA	3	0.5%
Eastern Mental Health Services	1	0.2%
Flinders University Council	6	1.1%
Guardianship Board	15	2.7%
Health & Community Services Complaints Commissioner	35	6.3%
HomeStart	7	1.3%
Independent Gambling Authority	1	0.2%
Institute of Medical & Veterinary Science	1	0.2%
Land Management Corporation	2	0.4%
Legal Practitioners Conduct Board	6	1.1%
Legal Services Commission	14	2.5%
Liquor & Gambling Commissioner	3	0.5%
Lotteries Commission	1	0.2%
Medical Board of SA	26	4.7%
Motor Accident Commission	14	2.5%
Mt Gambier & Districts Health Service Inc	1	0.2%
North Western Adelaide Health Service	2	0.4%
Northern Adelaide Waste Management Authority	1	0.2%
Nurses Board of SA	5	0.9%
Nursing & Midwifery Board South Australia	4	0.7%
Office of Consumer & Business Affairs	37	6.7%
Public Advocate	7	1.3%
Public Trustee	77	13.9%
Repatriation General Hospital	1	0.2%
Residential Tenancies Tribunal	5	0.9%
RSPCA Inspectorate	7	1.3%
SA Ambulance Service	20	3.6%
SA Community Housing Authority	8	1.5%
SA Psychological Board	1	0.2%
SA Film Corporation	1	0.2%
SACE Board of SA	4	0.7%
Sheriff	1	0.2%
South Australian Dental Service	2	0.4%
South Australian Tertiary Admissions Centre	3	0.5%
Southern Adelaide Health Service	16	2.9%
Super SA Board	13	2.3%
TransAdelaide	4	0.7%
University of Adelaide Council	10	1.8%
University of South Australia Council	18	3.3%
Veterinary Surgeons Board	2	0.4%
WorkCover Corporation	18	3.3%
WorkCover Ombudsman	1	0.2%
Total	551	100%

Other Authorities **Complaints Completed: Outcome 1 July 2009 to 30 June 2010**

	Other	Central Northern Adelaide Health Service	Courts Administration Authority	Health & Community Services Complaints Commissioner	Office of Consumer & Business Affairs	Public Trustee	Total	Percentage
Advice given	151	44	17	19	16	28	275	49.9%
Alternate remedy available with another body	16	8		4	2	1	31	5.6%
Declined	21	3	1	1	1	5	32	5.8%
Declined/No sufficient personal interest or not directly affected	2					1	3	0.5%
Declined/Trivial, vexatious, etc	1						1	0.2%
Declined/Withdrawn by complainant	1						1	0.2%
Not substantiated	17		1	5	4	5	32	5.8%
Out of Jurisdiction	5	1				1	7	1.3%
Out of Jurisdiction/Employment	1						1	0.2%
Out of Jurisdiction/Judicial body	3		1			1	5	0.9%
Out of Jurisdiction/Police matter	1						1	0.2%
Preliminary investigation	35	14	4	1	8	13	75	13.6%
Referred back to agency	31	1	1	4	1	15	53	9.6%
Resolved with agency cooperation	5				2	6	13	2.3%
S25 Finding/Unreasonable			1				1	0.2%
S25 Finding/Wrong						1	1	0.2%
Withdrawn by complainant	13	2		1	3		19	3.5%
Total	303	73	26	35	37	77	551	100%
	55.0%	13.2%	4.7%	6.4%	6.7%	14.0%		

Note: See Appendix 2 for definitions of outcomes

...I was not persuaded that disclosure was on balance, contrary to the public interest.

Adelaide City Council

A councillor's private document provided to council can be subject to FOI

Application for access

The Adelaide City Council had engaged consultants to undertake a survey of the city and make recommendations on potential heritage places as part of a Development Plan Amendment (**DPA**) process. A councillor with expertise in the area had developed his own list of possible heritage places, and archival and current photographs of properties, on a CD.

The council resolved at a meeting to provide a copy of the CD to the consultants without expressing an opinion about the heritage status of the properties, and authorised the council to pay additional professional fees to the consultants to consider the CD. The council did not formally consider the contents of the CD; and the CD was not tabled or reviewed at the council meeting.

The applicant requested access to the CD under the FOI Act, but was refused on the basis of the 'internal working document' exemption under the Act.

The council determined that disclosure of the CD would be contrary to the public interest because

- it had not finalised its deliberations on the DPA
- the council did not express an opinion of the merit or otherwise of the properties identified in the CD
- market values of the properties may be unnecessarily affected if the CD was released, particularly if they are not proposed for the heritage listing in the final DPA, which was to be released for public consultation
- revealing the properties being considered for heritage listing may cause unnecessary demolition
- the CD was not publicly available as it was never tabled or received at the council meeting and never formed part of its agenda.

Ombudsman review

After receiving submissions from both parties, I did not agree with council's view. While I agreed that the CD was a 'pre-decisional document' under the exemption, I was not persuaded that disclosure was on balance, contrary to the public interest. I took into account the following public interest reasons:

- the public interest in the achievement of the objects of the FOI Act
- although the CD was not on the 'public record' (thus making it available for public inspection under the Local Government Act), the fact that the CD was publicly discussed by the council and formed the basis for a resolution by council supported the public interest in its disclosure
- the fact that the council resolved to provide the CD to its consultants and authorise expenditure on their fees incurred in their assessment of the CD, were additional public interest reasons supporting the CD's disclosure. (I referred to section 8 of the Local Government Act and the accountability obligations of a council.)
- although I had no reason to doubt the intentions of the councillor, it could be perceived that as a heritage and restoration specialist, the councillor may stand to benefit (albeit indirectly) from providing his CD through council to the consultants. No other parties were invited by the council to provide their views to the consultants. This suggested that a greater degree of openness was required, and the public interest in the CD's release was amplified.
- even though the DPA process had not been finalised, this did not mean of itself that disclosure of the CD would offend the public interest
- it was arguable that there was a public interest in maintaining confidentiality of the 'proposed list' of buildings prior to the DPA public consultation process and council seeking interim development control from the Minister
- it is in the public interest that the heritage value of properties be maintained. However, I considered that the public was able to differentiate between the contents

of the CD, which represented one person's view about the heritage worth of the identified properties, and the consultant's and Council's 'proposed list' which later had been submitted for the government's consideration. In any event, the Council's current DPA heritage listing process was public knowledge. I considered that property owners would make it their business to inform themselves about the possibility of heritage listing of their properties, and that development applications seeking demolition may occur despite the release of the CD.

I did not agree with council's submission that the disclosure of communications made in the course of the development of a policy is not in the public interest. I considered this was generalised speculation, and failed to consider the contents of the CD – which were the expression of one councillor's view about the heritage status or otherwise of properties.

I considered that the general public would have sufficient knowledge of the DAP processes to be able to understand the status of the CD – that it was only one view of an individual which contributed to the consultant's list and the list of possible heritage sites ultimately proposed by Council. If the council believed there was likely to be confusion, it was at liberty to clarify the 'status' of the CD to the public.

I considered that the public was able to understand that the CD may not contain reasons for a decision made as to the finalised DPA, because of its very nature as a 'pre-decisional' document. It was the view of one person only, and not that of council.

Determination and comments

I determined to reverse the council's determination, to provide access to the CD.

This case highlighted the need for agencies to provide specific reasoning for their determinations, based on the circumstances and contents of the actual documents. Generalised speculation about the adverse consequences of disclosure of a document will not be sufficient to justify refusal.

Central Northern Adelaide Health Service (Modbury Hospital)

Complaint about the agency's response to an FOI application

Application for Access

The applicant applied for access to video surveillance footage held by the Modbury Hospital, a unit within the Central Northern Adelaide Health Service.

The applicant contacted my office to raise two concerns about the agency's response to his application:

(a) An accredited FOI officer of the agency returned his application and application fee without dealing with his application under the FOI Act. The applicant stated that the accredited FOI officer instead advised him that the agency does not release such footage to members of the public, but would release it to the police or pursuant to a subpoena.

(b) When the applicant requested an FOI application form he was advised not to provide the application fee when he lodged the form, contrary to the FOI Act.

Ombudsman review

My delegate contacted the agency's accredited FOI officer and obtained the agency's response to the applicant's concerns:

(a) The officer conceded that the application was valid (in other words, that it satisfied the criteria set out in section 13 of the FOI Act). The officer claimed that his response to the applicant was consistent with a policy of the agency to protect the privacy of individuals whose images may also be captured on the video surveillance footage.

(b) According to the officer, he sometimes advises applicants (usually law firms) to forward one cheque to cover the application fee and any costs associated with processing the application after the application has been dealt with, rather than two separate cheques. The officer noted that the person who replaced him while he was on leave may have extended this invitation to the applicant.

Determination and comments

A valid FOI application should be actively dealt with in accordance with the FOI Act. It is not sufficient to simply refuse to deal with an FOI application pursuant to a policy of the agency. This is so even though the policy may be relevant to an assessment of whether or not a document is exempt under the FOI Act.

Section 20(1)(a) of the FOI Act provides that an agency may refuse an application for access to a document if it is an 'exempt document'. In this event, however, the agency must specify the exemption clause (or clauses) relied upon and provide reasons for the refusal, unless doing so would result in the notice of determination itself being exempt.

Pursuant to section 13(c) of the FOI Act the application fee (if applicable) must accompany the application, otherwise the application may be invalid. Despite the incorrect advice from the agency, the applicant in this case had forwarded the application fee at the time he made his FOI application, thereby satisfying section 13(c).

By the time that the applicant contacted my office, it was apparent that the agency was deemed to have refused his application under section 19(2) of the FOI Act. As a result, I advised the applicant of his right to apply to the principal officer of the agency for internal review.

City of Charles Sturt

External review of a refusal to deal with an FOI application

Application for access

The applicant applied to the council for access to documents relevant to the St Clair land swap for 2007, 2008 and 2009.

The council initially refused to deal with the application under section 18(1) of the FOI Act. It predicted that it would take two staff members approximately 70 days to deal with 9000 or more documents identified, at a cost to the council of approximately $50,000. As the

applicant was a concession card holder the council was unable to pass its costs onto him.

The applicant sought internal review, after narrowing his application to the period from 2007 to 28 April 2008. Following internal review the council confirmed its refusal to deal with the application.

Ombudsman review

My office asked the council to make a provisional assessment of the documents captured by the narrowed internal review application. Electronic searches revealed approximately 1740 documents, which the council estimated would take 92 days to deal with at a cost of $27,000.

One of my delegates subsequently met with the parties on two occasions to try to effect a settlement under section 39(5)(c)(i) of the FOI Act.

At the first settlement conference both parties agreed to the council conducting electronic searches for documents using two sets of search terms: 'st clair' plus 'revocat*' and 'st clair' plus 'community land'. This was an attempt to exclude documents that the applicant did not want access to, for example about ongoing maintenance issues. After further narrowing the application for access, the council agreed to provide certain publicly accessible documents to the applicant, along with a list of documents captured by the further narrowed application.

At the second settlement conference, the council provided the applicant with publicly accessible documents and lists showing 22 documents containing the keywords st clair' plus 'revocat*' and 69 documents containing the keywords 'st clair' plus 'community land'. From the lists, the applicant identified 48 documents to which he sought access (after excluding duplicates and other documents). The council agreed to deal with the further narrowed application and to make an active determination by 30 July 2010.

On 24 June 2010 the council released 42 documents in full and one document in part to the applicant. The council deferred making a determination regarding the remaining five documents pending the outcome of its consultation with third parties.

Determination and comments

My external review was finalised following the second settlement conference. I commend both parties for their willingness to negotiate and the settlement they achieved as a result.

In this document-rich society, agencies faced with large applications will in my view benefit from exploring with applicants the possibility of using defined search terms when conducting their electronic searches. It is relevant to note, however, that manual searches may still be required.

Department of Education and Children's Services

External review of a deemed refusal

Applications for access

In 2008 the department commissioned an independent evaluation of the Rose Park Primary School Family Unit. On 13 May 2009, consultant Mr Doug Moyle provided his independent evaluation (**the original evaluation**) to the department.

On 17 July 2009 the department's Chief Executive provided an amended version of the evaluation to the Rose Park Governing Council for review on a 'confidential basis'. Following further amendments, the Chief Executive released the 'final' version of the evaluation to the Rose Park school community on 30 July 2009 (**the final evaluation**).

In September 2009 the applicant sought access to a copy of Mr Moyle's report 'as submitted to the Chief Executive, without alteration or changes made by officers of DECS or the Chief Executive' (**the 2009 application**). The applicant applied to my office for an external review of the department's refusal to release a document it had erroneously assessed as being within scope of the 2009 application.

I say erroneously, because during my review I discovered:

> that there was one version of the Evaluation which was solely authored by Mr Moyle 'without alteration or changes made by officer[s] of DECS or the Chief Executive' and that was the version dated 13 May 2009. However … this version has not been submitted to the Chief Executive of the agency.

Following my 2009 external review, I therefore concluded 'that no document exists which strictly fits within the wording of the applicant's FOI request'.

This prompted the applicant in April 2010 to seek access to the 'Independent Evaluation into the Family Unit at Rose Park Primary School by Mr Doug Moyle… as submitted by Mr Moyle on 13 May 2009' (**the 2010 application**).

The department failed to actively determine the 2010 application and was therefore deemed to have refused access to the original evaluation by reason of section 19(2)(b) of the FOI Act. Based on an agreement reached during the 2009 application I took the view that the deemed determination was made by or at the direction of the department's principal officer (also the Chief Executive), and internal review was not a prerequisite to external review on this occasion.

Ombudsman review

In May 2010 I requested preliminary information from the department. When the department failed to provide the requested information, I made a provisional determination. In so doing I had regard to what I understood to be a copy of the original evaluation provided in the context of my previous external review. At the same time I invited submissions from the applicant, the department, and two third parties.

In response to my provisional determination, the department claimed that the document 'should not be released to the applicant' by reason of clause 9 of Schedule 1 to the FOI Act (internal working documents). If I did not accept this claim, the department asked that I consider releasing the report after deleting literacy and numeracy results considered to be exempt under clauses 6(3a) (personal affairs), 13(1)(a) or 13(1)(b) (confidential information), and 'personalised comments' considered to be exempt

under clause 9(1). The applicant and one of the third parties also responded to my provisional determination.

Determination and comments

Although the 2010 external review was finalised very early in the 2010-2011 reporting year, the history of the 2009 and 2010 applications are such that I consider it appropriate to report on them in this Annual Report.

The whole document

I accepted that the original evaluation fell within the broad category of an internal working document. However, in order to satisfy clause 9(1) an agency must also show that disclosure of the document would, on balance, be contrary to the public interest.

There was insufficient evidence to satisfy me that the original evaluation was exempt under the confidentiality exemption, despite the claim by one third party that there was 'a verbal agreement that it [the original evaluation] would be confidential'.

Literacy and numeracy results

I accepted that literacy and numeracy results in the document concerned people under 18 years of age, as required by the personal affairs exemption clause 6(3a)(a). I did not accept that it would be unreasonable to release the results having regard to the need to protect the students' welfare, because in my view it was not possible to attribute specific results to individual students as they appear as averages in the table. In addition, I noted that similar sorts of results had been released to the school community as part of the final evaluation.

Because I was not satisfied that the literacy and numeracy results in the original evaluation would disclose the results of individual students, I was not persuaded that their release would found an action for breach of confidence under clause 13(1)(a), or might reasonably be expected to prejudice the future supply of such information to the Government or to an agency as required by clause 13(1)(b)(i).

Personalised comments

Given the acknowledgement of the 'openness and honesty of all contributors within the confidential confines of the evaluation process' in the original evaluation, I considered clauses 13(1)(a) and 13(1)(b), even though these were not expressly raised. I took the view that it did not necessarily follow that participants were promised confidentiality, or that the department was bound by any such agreement. Further, I noted that comments were generally attributed to groups rather than individuals, and that the Chief Executive announced that the report would be made public, which in my view would have put participants on notice as to how their contributions would be treated.

Notwithstanding the department's claims that release of certain 'personalised comments' would be contrary to the public interest, and would therefore be exempt under clause 9(1), some of them, or their substance, had been released as part of the final evaluation, or seemed to be generally well-known. Other comments merely reflected the author's opinions or his understanding of other people's views.

Public interest

When assessing the public interest (which was relevant to claims under clauses 9(1) and 13(1)(b)), I had regard to the public interest in promoting openness, accountability and public participation within representative government. I noted the reasons behind the preparation of the original evaluation (including to '[g]enuinely consult [the school community] and consider the full rage of opinions and perspectives'); the uncertain future of the Family Unit, notwithstanding the Chief Executive's decision regarding its future; and information in the public domain.

In this case, I concluded that there was a strong public interest in the school community having access to the detailed original evaluation to allow members to see the information available to the department before the Chief Executive made his decision regarding the future of the Family Unit, and to compare the author's views as an independent expert to the views expressed in the final evaluation released to the school community. In my view this would be likely to contribute to ongoing debate about the future of the Family Unit.

I considered the factors against release submitted by the department. The contents of the original evaluation put the document into context; it clearly identified the author and obviously pre-dated the Chief Executive's decision regarding the future of the Family Unit. As such, I did not consider the lack of opportunity for people and groups to respond to comments about them to be a factor against release.

I accepted that some of the comments in the original evaluation may not be appreciated by opposing sides of the debate. However, most of the comments, or the substance of them, were in the public domain. Given this, I did not accept that release of author's perspective of the different views would further damage relationships. Most of the contributors to the evaluation have an interest in the Family Unit's future, and therefore an interest in putting forward arguments in support of their views. Given this, the fact that comments are generally attributed to groups rather than individuals, and information already in the public domain, I was not satisfied that disclosure of the original evaluation would result in people refusing to participate in similar reviews in the future.

On balance, I was not persuaded that disclosure of the original evaluation would be contrary to the public interest in these circumstances.

Accordingly, I reversed the department's determination, pursuant to section 39(11) of the FOI Act, to enable the original evaluation to be released to the applicant.

By way of comment, I considered that the department's conduct had prolonged my external review unnecessarily. In addition, it contributed to a deterioration of the relationship between the applicant and the department, and a growing sense of mistrust.

Environment Protection Authority

Internal working documents - public interest submissions

Application for access

In 2009, the Minister for Urban Development and Planning was required to make a decision on the rezoning of land near Highbury to allow residential housing, as part of a Development Plan Amendment process (**DPA**) under the Development Act 1993. The rezoning also involved the eastern boundary of two closed landfill sites.

The Development Policy and Advisory Committee (**DPAC**) and the Department of Local Government and Planning (**DPLG**) were to provide advice to the Minister prior to making this decision. The Environment Protection Authority (**EPA**) made submissions to DPAC for its use in developing the advice.

A journalist applied under the FOI Act to the EPA for access to these submissions.

The EPA determined to refuse access to the three documents which fell within the scope of the application under clause 9(1) of Schedule 1 to the FOI Act, the 'internal working document' exemption.

The Minister later decided that on the recommendation of the EPA, the Highbury rezoning would be put on hold to enable further independent environmental testing in relation to the eastern boundary of the landfills. On internal review, the EPA determined to give access to two of the three documents in light of the Minister's decision.

Ombudsman review

The applicant requested my review of the determination to refuse access to the remaining document, contending that 'release of the document is clearly in the public interest on the grounds the Highbury rezoning plan will affect a large number of residents and new home owners in the area.'

During my review, I learned that the document to which access had been refused had initially been submitted to DPAC by the EPA (**the initial report**), but had been withdrawn within the hour. A revised version of the document had later been provided to DPAC (**the revised report**). The revised report was one of the documents which was released to the applicant after internal review.

I asked the EPA to highlight the differences between the initial and the revised reports, and also the reasons why the initial report had been withdrawn and replaced by the revised version. My office then identified that in fact, there was only a small amount of information in the initial report which was not reflected in the revised report (**the information**), over which a claim of exemption could be made.

The EPA submitted that the information did not reflect the EPA's views about the landfill issues as accurately as it should have, and that the views expressed were inconsistent with the views which had been previously communicated by the EPA to DPLG about the landfill. For this reason, the initial report had been recalled and replaced by the revised version. The EPA's public interest submissions under clause 9(1) were:

- if the information was released, the community may be confused about the EPA's position in relation to the DPA
- it would not further the good government of the state if a view is made public which does not represent the considered opinion of the EPA, and which may cause unnecessary concern
- the publication of 'poorly worded' and 'flawed advice' in the information which was promptly withdrawn, would not advance more effective participation by members of the public in the making and administration of laws
- potential development at Highbury is a matter of public interest. It would not promote the effective conduct of public affairs if public discussion was diverted by the publication of information which may be taken to express the views of the EPA when in fact it does not.

I weighed up these factors against the objects of the FOI Act and open and accountable government, and I accepted on balance that

- it would the harm the public interest if the EPA's views about the landfill issues and the DPA were not clearly articulated to the public and the government.
- the information appeared to reflect the EPA's final views on the DPA and the landfill issues: the initial report was not written in 'draft format'. It was in fact sent to the DPAC and then recalled after concerns were raised about the accuracy of its contents. In this context, I considered it would be contrary to the public interest if the information was released, as the views reflected appeared to be the final views of the agency - and in fact they were not.
- in this instance, confusion would feasibly be generated within the community about the EPA's position in relation to the DPA and the landfill, if the information was disclosed. This would be contrary to the public interest.

I was persuaded that the public interest arguments against disclosure of the information outweighed the public interest factors in favour of disclosure under clause 9(1).

Determination and comments

I varied the EPA's determination to protect the information from disclosure, but to enable the release of the remainder of the initial report which was replicated in the revised report.

This case was one of the rare instances where an agency ultimately has been able to present clear and persuasive reasons for justifying refusal of access to information under the public interest test in the internal working document exemption. The arguments were appropriately targeted to specific information in the document, and they were not generalised and speculative.

Subsequent to my review, the applicant invited my office to provide an FOI workshop for other journalists in his organisation about the operation of the FOI Act.

Department for Families and Communities

Whether documents were within the scope of applications and whether claims of exemption were justified

The full text of this determination is available at http://www.ombudsman.sa.gov.au/freedom-of-information/79970D01.pdf

Application for access

In late 2007, X, a former foster carer, was acquitted by a Supreme Court jury of charges alleging that he had sexually abused youths in his care.

On 30 October 2008 the applicant asked a question of the Minister for Families and Communities in the Parliament about the investigation of X by the Special Investigations Unit of the Department for Families and Communities (**the department**). [2] The Minister's response included the following statements:

> We had people going into that house and finding semi-naked boys in his [X] bed. [And after interjections] If you want me to go into detail I can. It is very unsavoury. [3]

The Minister reportedly 'relied on documentation provided by the department's special investigations unit' when making her statements to the Parliament. [4]

The applicant subsequently made 4 applications to the department for access to relevant documents. He specifically excluded information that would identify any children allegedly involved.

The department refused access to documents considered to be within the scope of the applications. During my reviews the department consented to de-identified descriptions of the documents relevant to application 4 being provided to the applicant, but objected to de-identified descriptions of the documents relevant to applications 1, 2 and 3 being provided.

Ombudsman review

My office obtained submissions from the applicant, the department, and the Guardian for Children and Young People (**the Guardian**).

Applications 2 and 3

During the course of these reviews I wrote to the department and expressed the provisional view that the documents identified by the department as within the scope of applications 2 and 3 were out of scope, 'and the department's determination[s] should be varied to conclude that no documents exist within the scope of the application[s]'.

On reflection the department agreed with my provisional views. I therefore varied the Department's determinations to conclude that the department held no documents within the scope of applications 2 and 3.

Applications 1 and 4

Given the department's concession regarding applications 2 and 3, my consideration was limited to applications 1 and 4. The department refused the applicant access to these documents under clause 12(1) of Schedule 1 to the FOI Act, in conjunction with section 58(1) of the Children's Protection Act 1993 (**the CP Act**).

Clause 12(1) deals with documents that are subject to secrecy or confidentiality provisions in other legislation. It provides as follows:

> A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.

The department relied on section 58(1) of the CP Act:

> A person engaged in the administration of this Act who, in the course of that administration, obtains personal information relating to a child, a child's guardians or other family members or any persons alleged to have abused, neglected or threatened a child, must not divulge that information.
>
> Maximum penalty: $10 000

Determination and comments

I was satisfied that the documents relevant to applications 1 and 4 contained personal information of people within the meaning of section 58(1) of the CP Act. I was further satisfied that the information was obtained by staff of the department in the course of their employment duties and for the purpose of administering the CP Act. X's consent to release information about him is not an exception to section 58(1) of the CP Act. Further and in any event, the information in the documents concerned the personal affairs of more than one person.

When interpreting the word 'divulge' in section 58(1) of the CP Act, I had regard to a judgment of his Honour Judge Smith of the SA District Court:

> In my view, the plain and ordinary meaning of "divulge" is to disclose. It does not necessarily convey the imparting of that which is previously unknown. Further, given the objectives and principles underlying the CP Act [the care and protection of children], I am of the view that the word "divulge" should be construed so as to give paramountcy to protecting the child's interests. Its meaning should not be confined to the disclosure of otherwise unknown or secret information. It should include that. There are difficulties in the qualified construction. For instance, whilst some information might be known to an applicant he or she may not be aware that it has been obtained by the agency. So in accessing the information the applicant will know that the agency has that information. The disclosure of the fact of that holding would amount to divulgence. Also, such a narrow interpretation would require the agency to indulge in what I would regard as an intolerable task of speculating about what the applicant may or may not know. In the end, the more expansive meaning is consistent with ensuring the protection of the child and so consistent with the objectives of the Act. [5]

I was also mindful of suppression orders relevant to the committal hearing, and over certain evidence relevant to the Supreme Court trial.

I concluded that it was practicable to release parts of the documents within the scope of applications 1 and 4. I did not accept that would be a divulgence for the purposes of section 58(1) of the CP Act to disclose under the FOI Act the actual words used by the social worker or the former

[2] South Australia, *Hansard*, House of Assembly, 30 October 2008, 768 (Ian Evans).

[3] South Australia, *Hansard*, House of Assembly, 30 October 2008, 768-769 (Jennifer Rankine).

[4] Hendrik Gout, 'Minister accused of misleading Parliament', The Independent Weekly (Adelaide, Australia) 14 November 2008,2.

[5] Ward vCourts Administration Authority [2003] SADC 18 (Unreported, Judge Smith, 21 February 2003 [57].

foster child, where they had given evidence about such matters during the criminal trial. In saying this, I understood that such evidence was not suppressed, and that relevant information of a general nature had been reported in the media. Likewise I did not consider that it would be a divulgence to release parts of a fourth document having regard to information provided to the applicant with the Department's consent, and publicly available information.

Although X had access to documents fitting the description of the documents under review through his solicitors, I considered that it would be a divulgence for the purposes of section 58(1) of the CP Act to disclose the remainder of the documents under the FOI Act. The clear policy underpinning the CP Act is the care and protection of children, and when exercising powers under the CP Act the child's wellbeing and best interests are paramount considerations. I had this in mind when reaching my conclusion, as well as the Guardian's view that release of the document would not serve the interests of the former foster child.

I varied the department's determinations with respect to applications 1 and 4 to enable parts of the relevant documents to be released to the applicant.

Minister for Families and Communities

External review of a refusal to release departmental officers' names

The full text of this determination is available at http://www.ombudsman.sa.gov.au/freedom-of-information/Lucas.pdf

Application for access

The applicant applied for access to 'the names and positions of all staff within the Minister's office, including departmental staff appointed to the Minister's office' as at 1 October 2009.

One document within the scope of the application was located, namely a directory of staff (**the document**). Following internal review, the Minister released the names of her six ministerial officers, but maintained that the names of departmental officers were exempt under the risk to life or safety exemption (clause 4(1)(a) of Schedule 1 to the FOI Act).

Ombudsman review

On external review I sought submissions from the Minister in support of her claim of exemption, and about her on-air offer to a journalist:

> ...I would be me more than happy for you to come in here and meet my staff, look at the list…

In support of the claim of exemption, the Minister claimed that:

> · Releasing names of staff in the Minister's Office could be reasonably expected to endanger their lives and/or physical safety.
>
> · There has been a history of threats against the Minister and the Minister's staff. There have also been incidents of disturbing and aggressive behaviour directed at the Minister and the Minister's staff.
>
> · The nature of the work handled by the Minister's Office make[s] it likely that the Minister's staff will continue to be exposed to aggressive and disturbing behaviour.
>
> · Staff of the Office all feel so strongly about the issue …

Regarding the offer to the journalist, the Minister submitted as follows:

> Providing an opportunity for (the journalist) to view a list of staff names and extending that invitation to actually meet staff is considered to be vastly different to that of releasing an internal document for public distribution. The reason for not releasing names was … to minimise any potential risk to the personal safety of staff.

In subsequent submissions, the Minister's office raised the internal agency operations exemption (clause 16), which requires that a 'substantial adverse effect' on those operations must be demonstrated.

In the decision of *Konieczka v South Australian Police* [6] Judge Boylan concluded that 'substantial adverse effect' refers to an effect that is 'sufficiently serious or significant to cause concern to a properly informed reasonable person'. In addition, he noted that the test 'is a high one'. [8]

Determination and comments

I balanced the Minister's submissions, including her concerns about the effect of the names being released, against the public interest in promoting accountability and public participation within representative government, as envisaged by the objects of the FOI Act.

I considered that the examples provided to support the risk to life and safety claim did not make out a threat to the life or personal safety of departmental staff. Based on the examples provided by the Minister, she and other Ministers and their offices appeared to be the primary focus of the threats.

While I accept that it is easier to search for information about a person using their name, it does not logically follow that *disclosure* of the names of departmental officers could reasonably be expected to endanger their lives or physical safety. Such information already is easily accessible within the public sector.

Similarly, I was not persuaded that *disclosure* of names could reasonably be expected to have a *substantial* adverse effect on the effective performance of her functions or on the conduct of industrial relations in the Minister's office.

I reversed the Minister's determination, thereby enabling the names of departmental officers to be released.

Flinders University of South Australia

Access to student evaluations of teaching and topic performance

Application for access

The applicant, a researcher, requested access from the university to:

> Student feedback surveys and written comment on teaching and courses for first year education courses (e.g. EDUC 1101 or equivalent) run in 2005 and 2006 and the number of students enrolled in these courses

Student Evaluation of Teaching exercises (**SET**) had been conducted for the two first year Education Topics in 2005 and 2006 taught

at the university. They comprised **Topic Evaluations** and **Teacher Evaluations**. The university held the SET electronic result reports of the rating scale questions, but the original hard-copies completed by the students had not been retained.

The university determined to refuse access to both evaluations under clauses 13(b)(confidential material) and 16(1)(iv)(operations of agencies) of Schedule 1 to the FOI Act. However, the student numbers enrolled in each topic were released. The university based its arguments on its *Policy on Evaluation of Teaching and Policy on Course and Topic Evaluation, Monitoring and Review*, both of which set out the rules under which SET is conducted.

On the confidential material exemption, the university argued that:

- restricted access to SET data and results ensures its quality and viability
- confidentiality in the policies protects teaching staff from subjective or unfiltered comments becoming public
- as only a few staff are involved in teaching a topic and that information is publicly available, it is not possible to guarantee anonymity by removing their names from the reports
- disclosure would show staff that confidentiality could not be guaranteed. It would be difficult to engage the assistance of staff in the conduct of future SET if the documents were released.

On the 'operations of agencies' exemption, the university argued:

- the SET processes are a valuable management tool within the university
- inability to guarantee confidentiality would have a detrimental effect on the university's ability to conduct SET
- the Teacher Evaluation process is primarily a tool informing individual performance development. The process would be untenable if confidentiality could not be guaranteed
- if SET could not be used, it would have a significantly adverse effect on the University's operations
- preservation of the integrity of the existing evaluation processes, of which confidentiality is a necessary part, is in the public interest.

The applicant submitted in his request for internal review that:

- the claimed confidentiality exemption was misconceived, as a reasonable person would expect no substantial change in the rate of survey completion by students if the evaluations were released
- he did not want names of staff, and it was unlikely that any student comment could be connected unequivocally with any individual staff member
- he agreed to accept the evaluations by year instead of topic, making it more unlikely that any teaching staff could be identified.
- similar information had been included in a report Raising the Profile of Teaching and Learning: Scientists Leading Scientists, which was published in an article by the Australian Learning and Teaching Council (**ALTC**) in December 2008
- the restriction of survey data denies the reality that it would be useful to third parties, including those conducting research in this area, fee paying students and parents and other academic staff.

On internal review, the university confirmed the determination, adding:

- the operation and management of SET relies on an assurance to those involved that the material is being provided and will be used in confidence in accordance with university policy.
- disclosure of the evaluations would amount to a breach of a university policy, which is a key element of staff conditions of employment approved by the University Council.
- it would not be in the public interest to release the information because the potential damage to the university's processes and functions in this case outweighs the benefits of release
- the publication of student comments in the ALTC report did not justify release, as in the ALTC Project, staff were active participants. It was clearly understood that the staff involved would be sharing the survey results and that the data would form part of a publicly available report to be submitted to ALTC as a requirement of funding.

Ombudsman review

After meeting with the university and the National Tertiary Education Union (**NTEU**), the parties submitted

- SET policies and procedures were the subject of an agreement between the NTEU and the university in 1994 (**the agreement**). The agreement incorporated confidentiality, and release of the evaluations would undermine that
- SET is not a perfect instrument for measuring teaching performance, and this is why the NTEU is concerned that results of SET are kept confidential.

I noted that the agreement foresaw the publishing of 'aggregate Faculty data' only.

I was not persuaded that students would be hesitant to complete future SET surveys if the evaluations were disclosed; and I agreed with the applicant that the university's submissions in this respect were misconceived. In relation to the Teacher Evaluations, I accepted that it may be possible to learn the names of staff involved in delivering the four topics; and I noted the confidentiality undertakings in the university's *Policy on Evaluation of Teaching*. Although the results were favourable to the university and they were dated, I considered that disclosure would place the university in breach of its own policy.

Disclosure would therefore undermine the university's credibility as an employer and its trustworthiness as a party in its negotiations and employment undertakings with teaching staff. In this way I considered that disclosure of the

evaluations could reasonably be expected to have a 'substantial adverse effect' on the conduct of industrial relations by the University within the meaning of clause 16(1)(v).

I did not consider that the ALTC Project was a comparable situation with the one at hand; and I did not consider in the circumstances that the applicant's agreement to access the evaluations by year rather than by topic took the issue any further.

In relation to the Topic Evaluations, I found that there was no express or implied confidentiality in the *Policy on Evaluation of Teaching and Policy on Course and Topic Evaluation, Monitoring and Review*. I was not persuaded that their disclosure would have the substantial adverse impact described in clause 16, and nor did I consider that release would on balance be harmful to the public interest.

Determination and comments

I varied the university's determination to enable release of the Topic Evaluations.

Minister for Health

External review of a determination that the Minister held no documents

The full text of this determination is available at http://www.ombudsman.sa.gov.au/freedom-of-information/Lucas.pdf

Application for access

The applicant applied for access to documents that referred to SA Progressive Business since 2005. SA Progressive Business (**SAPB**) is the fundraising arm of the South Australian Branch of the Australian Labor Party (**the ALP**).

An accredited FOI officer for the Minister for Health initially determined that there were no documents within the scope of the request. The Minister confirmed this determination following internal review.

Ombudsman review

My office took the view that documents intrinsically linked to the Minister's health portfolio were within the scope of the application. However, in order for the Minister to hold documents for the purposes of the FOI Act he must do so in his capacity as a Minister of the Crown, rather than as a member of the ALP.

The Minister's office subsequently identified 38 documents within the scope of the application. In June 2009 the Minister's office released 29 of these to the applicant.

Following consultation, the Minister claimed that the names of individuals (other than Ministers and their current support staff) and organisations were exempt under clause 13(1)(a) (confidential information). The ALP, acting on behalf of SAPB, claimed that the names of the organisations were confidential, and that the documents were exempt under clause 7(1)(c) (business affairs).

Determination and comments

Under section 39(11) of the FOI Act, I varied the Minister's determination to enable the names of individuals and organisations referred to in the nine documents to be released.

I was not satisfied that the documents were communicated to the Minister or his office in confidence, or that many of the names had the necessary quality of confidentiality required to found an action for breach of confidence.

I accepted it was arguable that the identities of the third parties constituted their business affairs, and my determination therefore turned on public interest considerations.

In assessing the public interest, I balanced the submissions raised by the Minister and selected third parties, against the public interest in promoting the objects of the FOI Act. The objects of the FOI Act include to promote 'accountability of Ministers' and to facilitate public participation within representative government.

I took the view that there is a public interest in people knowing who has had access to the Minister at SAPB functions, given that SAPB itself claims to provide:

> opportunities for its members to hear directly the government's views and intentions across the entire spectrum of its activity. This is an invaluable tool in ensuring your business is "in sync" with government direction.

I also had regard to quotes attributed to Premier Mike Rann. In response to Queensland Premier Anna Bligh's move to ban her 'ministers from exclusive business fundraisers', Premier Rann is reported to have said that '[t]here is a different corporate culture in Queensland. And what we do is disclose everything and that is the difference.' [9] The Premier is further quoted for his commitment in 2002 to 'lift standards of honesty, accountability and transparency in government':

> Secrecy can provide the cover behind which waste, wrong priorities, dishonesty and serious abuse of public office may occur. A good government does not fear scrutiny or openness. [10]

The apparent public interest in there being transparency in political fundraising, as reflected in the media and associated public comments was relevant in this regard.

Ultimately, I was not satisfied that disclosure of the documents would, on balance, be contrary to the public interest.

Independent Gambling Authority

Discretion to extend the time to apply for external review

Application for access

The applicant applied to the Independent Gambling Authority (**the IGA**) for access to documents relevant to an order barring him from the Adelaide Casino, including an audiovisual record of a hearing.

The IGA granted the applicant access to various documents, but refused him access to a copy of the audiovisual record. The applicant was nevertheless invited to view the audiovisual record.

Ombudsman review

Under section 39(3)(b) of the FOI Act, the applicant was obliged to apply to my office for external review within 30 days after the IGA made its determination. The applicant applied to my office almost two months late and approximately one and a half months after the IGA reminded him of his right to apply for external review.

Section 39(4) of the FOI Act gives me a discretion to extend the time for an applicant to make their application for external review.

In considering whether or not to exercise this discretion, I asked the applicant to provide an explanation for the delay, and submissions as to why he thought I should exercise my discretion. In addition, I invited him to respond to two provisional views which affected the merits of his application:

- That the IGA was not an 'agency' for the purposes of the application, because in reviewing the decision to ban the applicant from the casino it was acting as a tribunal within the meaning of the FOI Act

- Even if the IGA was an 'agency' for the purposes of the application, it would be entitled to refuse access to the audiovisual record because the record was a document that was prepared in relation to court or tribunal proceedings

The applicant accepted my invitation to provide submissions, but failed to rebut my provisional views or to adequately explain his delay in applying for external review.

Determination and comments

In the circumstances, I decided not to exercise my discretion to extend the time for the applicant to apply for external review under section 39(4) of the FOI Act.

Department of Planning and Local Government / Town of Gawler

External reviews of refusals to release information relating to large development

The full text of these 4 determinations is available at http://www.ombudsman.sa.gov.au/freedom-of-information/foi-determinations

Application for access

The advent of the government's 30 Year Plan has seen an emergence of interest from politicians and other community members in information concerning new land being re-zoned for development.

Three applications made by the same applicant involved all correspondence between the department and a consortium of developers in Mount Barker, information concerning the other interests of the consultancy firm which produced the Growth Areas Report (which fed in to the 30 Year Plan), and all documents submitted to the department by a developer and its consultants regarding the Gawler East Development Plan Amendment.

A fourth matter, which I determined early in July 2010 but which relates to the three above, concerned the Growth Investigation Areas report itself.

At first instance, and then again at internal review, the department determined to refuse access to all relevant documents, other than three 'with compliments' slips. In so doing, the department relied on submissions from third parties to whom the documents in part related.

Ombudsman review

It is often the case that commercial entities, whether in relation to development matters or otherwise, commonly expect to be able to do business with the government under conditions of complete confidentiality, and therefore expect that all information about them and their ventures should be exempted from release to the public.

Whilst this seems to be a common industry expectation, I consider it inconsistent with the FOI Act. In my view, the objects of the FOI Act are at odds with any notion of blanket confidentiality over commercial matters involving government.

This is not to say that all information relating to commercial matters will be released to the public if it is requested. In certain circumstances, it may be appropriate that particular information held by the government concerning the affairs of commercial entities is not released. Obvious examples might include trade secrets and specific financial capabilities. In these circumstances, it is usually easy to tie the particular information to clauses 7 and 13 of Schedule 1 to the FOI Act.

Determination and comments

I determined that certain of the documents requested should be released to the applicant, but my determinations for the three above matters are subject to appeal to the District Court.

I was satisfied that the fourth document is exempt under clause 1 of Schedule 1 to the FOI Act (Cabinet documents), albeit I suggested that some of it might find its way to the public.

Department of Planning and Local Government

External review of a determination to extend time under section 14A of the FOI Act

Application for access

The applicant made a submission to her local council. She subsequently applied to the department for the council's 'residential character' submission for the new residential development code.

The CEO of the department determined, under section 14A of the FOI Act, to extend the time in which the department had to process the application. The extension was made because:

> the application will involve consultation with third parties as required by Sections 25 & 27 of the Act. This consultation process will not conclude until after the expiration of the time limit prescribed under Section 14 of the Act.

The reasons for the department's determination appeared to me to be insufficient. It was not, for instance, obvious who the department needed to consult with. Additionally, the question is not whether the consultation process will have concluded within 30 days, but whether it is 'reasonably practicable' to consult within that period. The period of extension also has to be reasonable in the circumstances.

Ombudsman review

At a meeting between my office and officers of the department, I ascertained that the main reasons for the extension were did not justify an extension of one month. I considered that: an extension of two weeks would have been reasonable.

...the requirement that agencies must justify their decisions not to release documents means that they need to explain why the harm might be realised.

Unfortunately, not only had the department not yet written to the council for the purposes of consultation, but the department's FOI officers were yet to receive the relevant document from elsewhere in the agency.

Determination and Comments
My office suggested, in the circumstances, that the department expedite the processing of the application, which might include ringing and/or emailing the council rather than formal correspondence. I was pleased to hear that, receiving no objection from the council, the department determined to release the document about a week later.

Department of Transport, Energy and Infrastructure

External review of a refusal to release information concerning bridges

The full text of this determination is available at http://www.ombudsman.sa.gov.au/freedom-of-information/2010-00074.pdf

Application for access

The applicant applied to the department for access to documents containing information about the condition of bridges in South Australia.

The department located over 700 documents, the vast majority being 'bridge inspection reports'. Three documents were released, whilst the department claimed the remainder exempt under clauses 4(1)(a) (which relates to the life or physical safety of any person) and 4(2)(a)(v) and (b) (which relates to the security of any building, structure or vehicle) of Schedule 1 to the FOI Act.

The department confirmed its exemption claims at internal review so the applicant applied to me for an external review.

Ombudsman review

Put briefly, the department's arguments were that those with mischievous minds would use the information within the documents to do damage to bridges. Whilst it was abundantly clear that the department would forcefully press its claims that the bridge inspection reports were exempt in their entirety I encouraged it to target its arguments to specific matter and information within the documents. In my view the reports contained much information that could not be used in the antisocial manner feared by the agency.

Over the course of the external review, the application was narrowed to 22 bridge inspection reports, and the applicant was provided with copies of those documents, albeit so that he could not identify which bridges they related to.
On the basis that the agency had failed to identify information within the documents that could assist would-be wrong-doers, I determined that the department had not justified its claims that the reports, or the identifying features of the bridges they relate to, were exempt from release.

Determination and comments

Cautions regarding 'class claims' are, unfortunately, a repetitive theme in the annual reports produced by my office. In this case, the department argued that these types of documents contain sensitive information which, if released, could lead to community harm.

However, in my view the requirement in the FOI Act that agencies must justify their decisions not to release documents means that they need to explain why the harm might be realised. Only then will I be able to appropriately consider their exemption claims.

Adelaide Health Service Incorporated	1
Adelaide Hills Council	2
Alexandrina Council	2
Attorney-General's Department	1
Central Northern Adelaide Health Service	14
City of Adelaide	1
City of Burnside	1
City of Charles Sturt	4
City of Holdfast Bay	1
City of Mitcham	2
City of Playford	1
City of Tea Tree Gully	2
Corporation of the City of Marion	2
Corporation of the City of Unley	1
Corporation of the City of Gawler	4
Country Fire Service	1
Court Administration Authority	2
Department for Correctional Services	6
Department for Environment and Heritage	1
Department for Families and Communities	15
Department of Education and Children's Services	20
Department of Further Education, Employment, Science & Technology	1
Department of Health	8
Department of Planning and Local Government	12
Department of Primary Industries & Resources	5
Department of the Premier and Cabinet	5
Department of Transport, Energy and Infrastructure	3
Department of Treasury and Finance	2
Department of Water, Land and Biodiversity Conservation	1
Development Assessment Commission	1
District Council of Mallala	1
District Council of the Copper Coast	1
Environment Protection Authority	2
Flinders University Council	1
Guardianship Board	1
Legal Practitioners Conduct Board	3
Medical Board of SA	3
Minister for Education & Early Childhood Development	2
Minister for Environment and Conservation	1
Minister for Families and Communities	3
Northern Areas Council	1
Nursing and Midwifery Board South Australia	1
Outside Jurisdiction	3
Port Augusta City Council	1
Public Trustee	1
Residential Tenancies Tribunal	1
RSPCA Inspectorate	1
SA Community Housing Authority	1
SA Housing Trust	3
SA Police	2
South Australian Tourism Commission	1
Southern Adelaide Health Service	11
The Barossa Council	3
Trans Adelaide	1
University of Adelaide	1
Veterinary Surgeons Board	1
Wakefield Regional Council	1
WorkCover Corporation	6
Total	180

Freedom of Information **Applications for Reviews Received: Issues** **1 July 2009 to 30 June 2010**

	Other	Central Northern Adelaide Health Service	Department for Families and Communities	Department of Education and Children's Services	Department of Planning and Local Government	Southern Adelaide Health Service	Total	Percentage
Access to information	89	13	13	18	12	10	155	74.5%
Access to documents/Deemed refusal	1						1	0.5%
Access to documents/Sufficiency of search	8		1	7			16	7.7%
Amendment of records	1		2				3	1.4%
Agency Determination to extend time (s14A)	1						1	0.5%
Agency Determination to refuse to deal with application/ Voluminous application (s18(1)	1						1	0.5%
Agency FOI processing errors/Other	1						1	0.5%
Exemptions/Business affairs	2				3		5	2.4%
Exemptions/Cabinet documents					1		1	0.5%
Exemptions/Confidentiality	1						1	0.5%
Exemptions/Internal working documents	2			1			3	1.4%
Exemptions/Judicial functions	1						1	0.5%
Exemptions/Law enforcement	3						3	1.4%
Exemptions/Legal professional privilege	2						2	1.0%
Exemptions/Operation of agencies	2				1		3	1.4%
Exemptions/Personal affairs	1		1	1			3	1.4%
Exemptions/Secrecy provisions in legislation	3		3				6	2.9%
Extension of time for application for review (s39(4))		1					1	0.5%
Other - OOJ	1						1	0.5%
Total	120	14	20	27	17	10	208	100%
	57.7%	6.7%	9.6%	13.0%	8.2%	4.8%		

Note:Issues which appear as shaded lines relate to complaints finalised before 15 March 2010, when the new case management system commenced operation. Those appearing in unshaded lines relate to complaints finalised after that date. The unshaded issues will appear in future reports.

Adelaide Hills Council	2
Alexandrina Council	2
Attorney-General's Department	1
Berri Barmera Council	1
Central Northern Adelaide Health Service	14
City of Adelaide	1
City of Charles Sturt	4
City of Holdfast Bay	1
City of Mitcham	1
City of Playford	1
City of Tea Tree Gully	2
Chiropractic and Osteopathy Board of South Australia	1
Corporation of the City of Marion	2
Corporation of the City of Unley	1
Corporation of the City of Gawler	4
Court Administration Authority	1
Department for Correctional Services	5
Department for Environment and Heritage	2
Department for Families and Communities	17
Department of Education and Children's Services	18
Department of Health	5
Department of Planning and Local Government	11
Department of Primary Industries & Resources	2
Department of the Premier and Cabinet	5
Department of Transport, Energy and Infrastructure	5
Department of Treasury and Finance	1
Department of Water, Land and Biodiversity Conservation	1
Development Assessment Commission	1
District Council of Mallala	1
District Council of the Copper Coast	1
Environment Protection Authority	4
Flinders University Council	1
Guardianship Board	1
Legal Practitioners Conduct Board	4
Medical Board of SA	3
Minister for Environment and Conservation	2
Minister for Families and Communities	3
Minister for Health	1
Northern Areas Council	1
Nursing and Midwifery Board South Australia	1
Outside Jurisdiction	3
Port Augusta City Council	1
Public Trustee	1
Residential Tenancies Tribunal	1
RSPCA Inspectorate	1
SA Community Housing Authority	1
SA Housing Trust	2
SA Police	2
SA Water Corporation	1
Southern Adelaide Health Service	10
The Barossa Council	3
The Treasurer	1
Trans Adelaide	1
Wakefield Regional Council	1
WorkCover Corporation	11
Total	175
Wakefield Regional Council	1
WorkCover Corporation	6
Total	180

Freedom of Information **Matters Completed: Outcomes 1 July 2009 to 30 June 2010**

	Other	Central Northern Adelaide Health Service	Department for Families and Communities	Department of Education and Children's Services	Department of Planning and Local Government	Southern Adelaide Health Service	Total	Percentage
Declined	1						1	0.6%
Declined/Withdrawn by complainant	1						1	0.6%
FOI Advice given	62	10	8	8	7	10	105	60.0%
FOI/application for review withdrawn by applicant	8	1					9	5.1%
FOI/Application settled during review (s39(5))	1			2			3	1.7%
FOI/Determination confirmed (s39(11))	4		1	1			6	3.4%
FOI/Determination reversed (s39(11))	2				3		5	2.9%
FOI/Determination revised by agency (s19(2a))	2						2	1.1%
FOI/Determination varied (s39(11))	2		4	2			8	4.6%
FOI Review	20	3	4	5	1		33	18.8%
Resolved with agency cooperation	1						1	0.6%
Transfer OOJ	1						1	0.6%
Total	105	14	17	18	11	10	175	100%
	60.0%	8.0%	9.7%	10.3%	6.3%	5.7%		

Note: See Appendix 3 for definitions of FOI outcomes

Our vision is for this office, and for each agency within our jurisdiction, to provide services of the highest quality to the South Australian community.

Our Mission

Our mission is to help make South Australia a state where all communities and individuals are treated fairly by:

- Promoting sound public administration and accountability within State and local government; and
- Keeping the Parliament, the Government and the community informed of matters of public importance.

Our Functions

The Ombudsman contributes to sound public administration by South Australian State and local government agencies through:

- Investigating, conciliating and resolving complaints in accordance with the Ombudsman Act;
- Undertaking investigations referred by Parliament, and conducting administrative audits and investigations on the Ombudsman's own initiative;
- Making recommendations for change in procedures and legislation;
- Reviewing decisions about release of information under the *Freedom of Information Act 1991*; and
- Providing advice and training.

The Ombudsman is an independent statutory officer within the Attorney General's Department, and reports directly to Parliament.

Our Values

In performing our work we are committed to:

- Maintaining independence and impartiality

  We are committed to acting in a manner that maintains the independence and objectivity of the Ombudsman.

- Facilitating access to our services

  We are committed to ensuring people can, and know how to, access our services through a range of technologies and avenues.

- Respecting the views of all parties

  We are committed to ensuring that all parties' points of view are heard and considered.

- Fairness and integrity

  We are committed to acting in accordance with our powers, basing our actions on relevant considerations and at all times acting in good faith.

- Accountability in our dealings

  We are committed to keeping people informed about their rights and any decisions affecting them, and to using our resources efficiently, effectively and responsibly. We will strive to refine means to measure and report on our performance.

- Responsiveness in our service delivery

  We are committed to providing prompt service and facilitating speedy resolutions where appropriate

Our Jurisdiction

Certain agencies are outside Ombudsman SA's jurisdiction. We do not have the power to investigate actions and decisions of:

- the South Australian Police
- employers - which affect their employees
- private persons, businesses or companies
- Commonwealth or interstate government agencies
- government Ministers and Cabinet
- courts and judges
- legal advisers to the Crown

The Ombudsman has a discretion whether to commence or continue an investigation. Key issues of the complaint will be assessed to determine whether:

- special circumstances exist for matters over 12 months old
- the complainant has a legal remedy or right of review or appeal and whether it is reasonable to expect the complainant to resort to that remedy
- a complaint appears to be frivolous, trivial, vexatious, or not made in good faith;

- an investigation does not appear to be warranted in the circumstances, such as where the agency is still investigating the complaint or a complaint has not yet been made to the agency, or where another complaint-handling body may be more appropriate;
- the complainant does not have a sufficient personal interest in the matter.

Investigations by Ombudsman SA

Any individual person or organisation who is directly affected by an administrative action of a government department, authority or council under the Ombudsman's jurisdiction can make a complaint to the Ombudsman.

Investigations may be initiated by Ombudsman SA in response to a complaint received by telephone, in person, in writing or through the website from any person (or an appropriate person acting on another's behalf); a complaint referred to the Ombudsman by a member of Parliament or a committee of Parliament; or on the Ombudsman's own initiative.

If the Ombudsman decides to investigate a complaint, the Ombudsman advises the agency and the complainant accordingly. As part of this process, the Ombudsman identifies the issues raised by the complainant along with any other issues that we consider relevant. The Ombudsman can choose to conduct either an informal or a formal investigation (preliminary or full). If the Ombudsman decides not to investigate, the complainant is advised of this, along with the reasons for the decision.

Investigations are conducted in private and the Ombudsman can only disclose information or make a statement about an investigation, subject to compliance with specified provisions of the Act.

At the conclusion of an investigation, the Ombudsman may recommend a remedy to the agency's principal officer or recommend that practices and procedures are amended and improved to prevent a recurrence of the problem.

The Ombudsman should not in any report, make adverse comments about any person or agency unless they have been provided with an opportunity to respond.

The Ombudsman may make a recommendation to Parliament that certain legislation be reviewed.

Service principles

If the complaint is within the Ombudsman's jurisdiction, the Ombudsman will, in normal circumstances

- provide an accessible and timely service, with equal regard for all people with respect for their background and circumstances
- provide impartial and relevant advice and clear information about what we can and cannot do
- provide timely, impartial and fair investigation of complaints
- ensure confidentiality
- keep people informed throughout the investigation of a complaint; and
- provide concise and accurate information about any decisions or recommendations made and provide reasons wherever possible

Referral to other jurisdictions

Ombudsman SA also has an important referral role. Even though we may be unable to be of direct assistance to people who approach the office about matters that are not within jurisdiction, it is often possible to refer them to another appropriate source of assistance. Therefore, an outcome of 'no jurisdiction' does not necessarily mean that the office has not been of assistance to the person who consulted us.

If a complaint is out of Ombudsman SA's jurisdiction we will attempt to refer the complainant to another complaint handling body which may be able to assist.

APPENDIX 1.
Financial Statement

Expenditure		**2008/09**	**2009/10**
Annual Report		446	405
Branding Development			23 730
Computer expenses		24 562	75 372
Equipment maintenance		1 395	13 993
Equipment purchases			15 755
Fringe Benefits Tax		3 140	4 492
* Motor vehicles		15 299	18 068
Postage		1 121	3 295
Printing and stationery		8 360	21 558
Publications and subscriptions		2 231	5 534
Recruitment costs		58 457	1 493
Research Grant			10 000
Staff development		5 241	35 337
Sundries		14 265	27 363
Telephone charges		21 459	18 068
Travel/taxi charges		10 621	8 157
Website Development			13 101
	Sub-total	166 597	295 721
* Accommodation and energy		110 722	112 745
Consultant/Contract staff		145 879	119 300
	Sub-total	256 601	232 045
* Salaries		1 373 424	1 320 366
	Sub-total	1 373 424	1 320 366
Income		(13 300)	(9 761)
	Sub-total	(13 300)	(9 761)
* Figures include expenses incurred by the Ombudsman position (funded by Special Acts)			
Net expenditure		**1 783 322**	**1 838 371**

APPENDIX 2. Description of outcomes - Ombudsman jurisdiction

Ombudsman SA's new case management system, and revised office procedures incorporating target timeframes for completion of files, commenced operation on 15 March 2010. As a part of this implementation, new reporting categories have been introduced. This appendix provides an explanation of the new categories, and their relationship to categories included in previous years' Annual Reports.

1. Outcomes included in this year's Annual Report

Advice given (Continuing category)

Information or advice was provided to the public, normally without contacting the agency complained against.

Whilst this category will continue, we expect its numbers (and consequently the total number of complaints) will reduce in future years.

From 15 March 2010, a number of matters which were previously recorded as complaints with an outcome of 'advice given', are being recorded as 'approaches' which are resolved without the lodging of a formal complaint. Because they are resolved speedily, Ombudsman SA has determined not to classify them as complaints.

Alternative remedy available with another body (New category)

The complainant had an alternative remedy available. Under section 13(3) of the Ombudsman Act, Ombudsman SA must not investigate unless it is not reasonable for the complainant to exercise that remedy.

Cannot contact person (New category)

The complainant is unable to be contacted.

Conciliated (New category)

The complaint was conciliated under section 17A of the Ombudsman Act

Declined (formerly included in 'Declined/Terminated/ Withdrawn')

The matter was terminated at an early stage because:

- further investigation was unnecessary or unjustifiable
- the complainant had no sufficient personal interest or was not directly affected, or
- the complaint was trivial or vexatious.

Full Investigation (Replaced by Section 25 finding categories)

A Full Investigation is commenced where sufficient background material has been gathered to indicate a basis for complaint. Section 18(1a) requires that the Principal Officer of the agency be advised of such an investigation. Such advice is usually (although not necessarily) provided in writing.

In future, the results of full investigations will be reported against the specific administrative error found, as section 25 findings.

Not Substantiated (formerly 'Not Sustained')

A matter is classed as *Not Substantiated* if the complaint has been investigated and sufficient information has been discovered to conclude that there is no basis to form an opinion pursuant to section 25(1).

Ombudsman comment warranted (New category, formerly included in 'Preliminary Investigation')

These matters have been the subject of a preliminary investigation. No administrative error has been found but an issue worthy of comment has been identified.

Out of jurisdiction

After investigation the complaint is found not to be within jurisdiction because:

- the body complained about is found not to be an agency for the purposes of the Ombudsman Act
- the matter arose from an employment relationship - section 17(1)
- it relates to an action by a judicial body
- it relates to action by a Minister, or
- it relates to a police matter.

Out of time (New category, formerly included in 'Declined/ Terminated/Withdrawn')

After investigation the complaint is found not to be within jurisdiction because the matter arose more than 12 months previously.

Preliminary Investigation (Old category)

A Preliminary Investigation pursuant to section 18(1) of the Ombudsman Act is conducted to obtain preliminary information to determine whether the matter should proceed to a full investigation. Often such an investigation can involve a considerable amount of effort on the part of the investigator, without reaching the point where formal advice of a full investigation is necessary. Many complaints are resolved during this phase.

Since 15 March 2010, the outcome of these investigations may be recorded as:

- not substantiated
- Ombudsman comment warranted
- out of jurisdiction
- out of time
- referred back to agency
- resolved with agency cooperation

Referred back to agency (New category, formerly included in 'Advice Given')

Ombudsman SA declines to investigate because the agency complained about has not had a reasonable opportunity to address the matter.

Resolved with agency cooperation (formerly 'Reasonable Resolution')

A matter is classed as having been resolved with agency cooperation if, before an opinion is formed pursuant to section 25(1) of the Ombudsman Act, some action is taken by the agency to remedy (in the opinion of the Ombudsman) the cause of the complaint, or provision is made whereby the complaint can be properly addressed by the agency.

Section 25 Findings (New categories, replacing 'Full Investigation')

These categories detail the outcome of a full investigation where a specific administrative error is found. They comprise:

- improper purpose or irrelevant consideration - section 25(1)(d)
- mistake of law or fact - section 25(1)(f)
- no reasons given - section 25(1)(e)
- unlawful - section 25(1)(a)
- unreasonable law or practice - section 25(1)(c)
- unreasonable, unjust, oppressive or improperly discriminatory - section 25(1)(b)
- wrong - section 25(1)(g)

Transferred to WorkCover Ombudsman (Old category)

These matters are now recorded in the category 'Alternative remedy available with another body.'

Withdrawn (formerly included in 'Declined/Terminated/ Withdrawn')

The matter was withdrawn by the complainant.

2. Outcomes included in previous years' Annual Reports, but now replaced

Not Sustained - Explanation Given (Replaced category)

A matter is classed as *Not Sustained - Explanation Given* if the complaint has been investigated and sufficient information has been discovered to conclude that there is no basis to form an opinion pursuant to section 25(1), but as a consequence of the information obtained the complainant is able to receive an explanation of the reasons for the agency's actions, and that explanation is in advance of the explanation or information which the complainant previously had from the agency

Partly Resolved in Favour of Complainant (Replaced category)

A matter is *Partly Resolved in Favour of Complainant* if there is some benefit to the complainant or some action by the agency such that the substance of the complaint is partly addressed and resolved. This description would often apply where there would not have been sufficient information to sustain the complaint, but notwithstanding this the agency acts to partly remove the difficulty which was the basis of the complaint.

Reasonable Resolution (Replaced category)

A matter is classed as having a *Reasonable Resolution* if, before an opinion is formed pursuant to section 25(1) of the Ombudsman Act, some action is taken by the agency to remedy (in the opinion of the Ombudsman) the cause of the complaint, or provision is made whereby the complaint can be properly addressed by the agency.

APPENDIX 3. Description of outcomes - FOI jurisdiction

FOI Advice given (Old category)

Formal or informal freedom of information advice was provided to the public and/or agency. Since 15 March 2010, this category has been treated as a type of approach, with FOI issues identified as their subject.

FOI Investigation (Old category)

An investigation under the Ombudsman Act was conducted into a freedom of information related administrative action. These investigations are now categorised as complaints under the Ombudsman Act, with FOI issues identified as their subject.

FOI Review (Old category)

An external review was conducted. This category has been replaced by the FOI review categories listed below. Each external review has one main outcome recorded for reporting purposes, as follows:

FOI Review - Application settled during review - section 39(5) (formerly FOI Review - matter settled during review)

The external review settled following negotiations with the parties

FOI Review - Determination confirmed - section 39(11)

At the conclusion of external review, the Ombudsman was satisfied with the agency's determination.

FOI Review - Determination reversed- section 39(11)

At the conclusion of external review, the Ombudsman was not satisfied with the agency's determination, and reversed it.

FOI Review - Determination revised by agency - section 19(2a) (formerly FOI Review - Agency revised determination)

During external review, the agency revised its determination in part or in whole.

FOI Review - Determination varied- section 39(11)

At the conclusion of external review, the Ombudsman was not wholly satisfied with the agency's determination, and varied it.

FOI Review - Application dismissed - lack of cooperation - section 39(8)

The application is dismissed because the applicant did not meet their obligation to cooperate in the conduct of the review.

FOI Review - Application for review withdrawn by applicant (formerly FOI Review - withdrawn)

During or at the conclusion of external review, the applicant decided to withdraw the application.

Outside jurisdiction

The body was not an 'agency' under the FOI Act or the application for external review was premature.

APPENDIX 4.
Speeches and staff development

Speeches and training provided by Ombudsman SA staff for agencies and councils

July 2009
Natural Resource Investigators Group Network Conference
Ombudsman

July 2009
Metropolitan - *FOI Workshop for councils*
3 staff

July 2009
Crystal Brook - *FOI Workshop for councils*
3 staff

August 2009
Workshop -*Complaints handling in Local Government*
Deputy Ombudsman

August 2009
Metropolitan councils CEO's meeting
Ombudsman

September 2009
Local Government Association of SA - CEO's meeting
Ombudsman

September 2009
Adelaide University Law School - *The Ombudsman in an administrative law context*
Deputy Ombudsman

September 2009
Health & Community Services Complaints Commissioner - *Training in administrative law principles*
Deputy Ombudsman

September 2009
Law Council Alternative Dispute Resolution Symposium - *The Multi-Door Court'*
Ombudsman

October 2009
Riverland - Karoonda - *FOI Workshop for councils*
3 staff

October 2009
Eyre Peninsula - Wudinna - *FOI Workshop for councils*
3 staff

October 2009
Local Government Association of SA - AGM - *Keynote speaker*
Ombudsman

November 2009
Local Government Chief Officers Group - National conference - *Building Better Governance*
Ombudsman

November 2009
Prospect Council - Elected Members Workshop
Ombudsman

November 2009
Australian Institute of Administrative Law - *Lunchtime seminar*
Ombudsman

November 2009
South East - Naracoorte - *FOI Workshop for Councils*
3 staff

November 2009
State Records - *Accredited FOI Training*
2 staff

February 2010
State Records - *Accredited FOI Training*
2 staff

March 2010
Norman Waterhouse Lawyers - *Staff seminar*
Ombudsman and Deputy Ombudsman

March 2010
Local Government Association of SA - *FOI Workshop*
Deputy Ombudsman

March 2010
State Records - *Accredited FOI Training*
2 staff

April 2010
Anti-Corruption Branch - *Training Day*
Ombudsman

April 2010
State Records - *Accredited FOI Training*
2 staff

April 2009
Adelaide University Law School - *The role of the Ombudsman*
Deputy Ombudsman

May 2009
Blind Welfare Association - *The role of the Ombudsman*
Staff member

May 2010
State Records - *Accredited FOI Training*
2 staff

May 2010
Local Government Association of SA - *Governance Seminar*
Ombudsman

June 2010
Environment Protection Authority - *Roundtable*
Ombudsman

June 2010
Wallman's Lawyers - *Election Survival guide*
Ombudsman

June 2010
State Records - *Accredited FOI Training*
2 staff

Staff training and conferences attended

July 2009
Leena Sudano
The Health and Community Services Complaints Commissioner
All staff

August 2009
Wayne Lines
The WorkCover Ombudsman
All staff

August 2009
Aboriginal Cultural Awareness training
Ombudsman

August 2009
Commonwealth Ombudsman trainer Writing workshop
3 staff

August 2009
AGD Risk Management training
5 staff

September 2009
Sandy Canale
The Energy Industry Ombudsman
All staff

September 2009
2009 National Conference - Good, Better, Best Complaint Handling
Canberra
Deputy Ombudsman

October 2009 (2 days)
Glenn Sullivan
Victorian Ombudsman's Office - Investigation Training
All staff

November 2009
Michael Butler, Manager
Disruptive Management Team, Housing SA
All staff

November 2009
David Brown and Marja Elizabeth, Department for Correctional Services
Shaping Corrections
All staff

November 2009
Deputy Ombudsmen's meeting
Canberra
Deputy Ombudsman

December 2009
Stephen Brennan
The Employee Ombudsman
All staff

January 2010
Roger Freeman, DPLG
Development Act 1993
All staff

March 2010 (2 days)
Asia-Pacific Ombudsmen Regional Conference
Canberra
Ombudsman

April 2010
Paul Hellander
Working with interpreters
All staff

May 2010
Dr Steven Churches
A tour of the Ombudsman Act
All staff

Ombudsman SA investigates complaints about South Australian government and local government agencies, and conducts freedom of information reviews.

The Ombudsman can also receive information about State and local government activities confidentially from whistleblowers.

Contact us

If you're not sure whether Ombudsman SA can help you, we are happy to discuss your matter further. If it is not under our jurisdiction, we are happy to point you to another agency who may be able to assist.

Visit our website for further information about our services or register your complaint directly online.

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