

**Division 52: Office of the Information Commissioner, \$2 037 000 —**

Ms W.M. Duncan, Chairman.

Dr K.D. Hames, Minister for Health representing the Attorney General.

Mr S. Bluemmel, Information Commissioner.

[Witness introduced.]

**The CHAIRMAN:** The member for Warnbro.

**Mr P. PAPALIA:** I refer the minister to page 629, under the heading “Advice and Awareness”, which states —

Provide objective advice and information to members of the public and agencies to assist in the proper lodgement and processing of applications under the *Freedom of Information Act 1992*.

It is a question of some import to the public of Western Australia at the moment, but with respect to that advice, has the minister received any requests for advice about whether the short message system forms of communication—that is, SMS or what is colloquially known as texts—are subject to the act?

**Dr K.D. HAMES:** Mr Bluemmel.

**Mr S. Bluemmel:** Thank you, Madam Chair. The position on that, as far as I am concerned, is entirely clear. For the past four years, in all of the training that I have conducted for agencies, ministers and members of the public who wish to use FOI, I have made it perfectly clear that SMSs or texts are subject to FOI, as are many other sort of new forms of media such as tweets, postings by an agency or a minister on a Facebook page and so on. For four years I have made that message very clear.

**Mr P. PAPALIA:** In the Information Commissioner’s experience, has a text ever been subject to an FOI application in Western Australia?

**Dr K.D. HAMES:** Mr Bluemmel.

**Mr S. Bluemmel:** Thank you. In my external review function on the Merits Review Tribunal, whereby I act in my capacity of overlooking government and ministerial FOI decisions, it has not come up. As to whether it has come up in other matters that do not come before me—because I see only about the one per cent or so of all matters that do come before me on appeal—it may well have. But I do not get that level of detailed information. I understand that the practicalities of it are quite difficult, but I would also point to my other role as a member of the State Records Commission. The State Records Commission also has a piece of legislation—that is, the State Records Act 2000—that is technology neutral. If the SMS in question is a record that evidences a decision or a decision-making process, that needs to be captured on an agency’s records management system. That does not mean an SMS necessarily; it might be that a file note is created contemporaneously, for example.

**Mr P. PAPALIA:** I find that last observation very interesting. In the event that a text was part of a decision-making process, would it be expected that it would be necessary to create some formal record or some other record of that decision-making process?

**Mr S. Bluemmel:** It depends again on the nature of the communication. If that is the only communication or the only evidence of a particular decision being made, rather than being an ephemeral record, then certainly for a government agency, that needs to be done. For ministers, the rules are somewhat different. There are still rules, of course, but they are not the same as for non-ministerial agencies.

**Mr P. PAPALIA:** I refer the minister to page 628. Under the heading “Service Summary”, there is a line item in the table showing “Resolution of Complaints”. The resolution of complaints is noted there, but do we have the number of outstanding complaints? Is that somewhere else? I am a little unsure of how one would measure the actual number of complaints versus those that are resolved. How many are outstanding or not resolved?

**Mr S. Bluemmel:** That information to that level is not in the budget papers. It is in my annual report every year, and in fact one of the things I have instituted since taking over the role is that the information about current, outstanding matters before me—their age, the number completed and the number received—is now updated monthly on my website for all complaints.

**Mr P. PAPALIA:** As an indication, the estimated actual for resolution of complaints this year cost us \$1.455 million. It appears to be a reasonably consistent growth pattern. Is that based just on the office’s historical number of complaints and the impact of the cost of resolving those complaints? Is that what the projections are based on, or is there some hope to reduce or tackle them in a different fashion or anything like that?

**Mr S. Bluemmel:** There is indeed a great hope to reduce them, and that is my never-ending challenge. To give people an idea, as of 31 July this year, less than a month ago, we had 105 outstanding, unfinalised complaints on hand; that is approximately the number that we receive every year. We receive in the order of 100 or thereabouts. The level of complexity varies greatly, as one can imagine. In fact, last year one of my decisions was appealed in the Supreme Court and then to the Court of Appeal, which was a first in Western Australia. I am pleased to say that in both cases they upheld my decision. However, that was obviously a very complex matter dealing with the Varanus Island gas hub incident. Others are very simple, but I would say that most are getting more and more complex. The estimates of growth is simply a matter of the office cutting its cloth to suit what we have available from government and from Treasury. Within that, we try, obviously, to close as many matters as expeditiously as possible. Currently, we are halfway through a pilot program to undertake an early formal conciliation process for matters when they come to my office while they are still fresh and the parties are still talking to each other.

**Mr P. PAPALIA:** Further in relation to that matter, I refer to the table at the bottom of page 628, under the heading, “Outcomes and Key Effectiveness Indicators”. How does the Information Commissioner determine the satisfaction of those people? Some figures are noted in the budget papers—that is, 2011–12 actual, 77 per cent and 2012–13 budget, 80 per cent—but how does the commissioner determine that?

[5.00 pm]

**Mr S. Bluemmel:** This is a statistic that I am actually immensely proud of. The way we collect this information is that after we have finalised a complaint—or what we term an external review, which is when I carry out my tribunal function—my office sends out a questionnaire to each of the parties involved. One question on that questionnaire asks about the level of satisfaction with that process. We also allow people to make suggestions to us for improvement, which we take on board. The reason I am particularly proud of this is that although I try to be as accessible as possible, I am essentially an adversarial tribunal, and chances are that one of the parties will not get what they want. In light of that, I take great pride in the fact that 84 per cent of parties to matters that my office resolves on external review are satisfied with the process.

**Mr P. PAPALIA:** So the 2011–12 actual is 77 per cent of the total of all parties, not just—

**Dr K.D. HAMES:** Yes.

**The appropriation was recommended.**