

FREEDOM OF INFORMATION PROCESS

Motion

Resumed from 31 March on the following motion moved by Hon Ljiljanna Ravlich —

That this house condemns the Premier for failing to honour his election commitment to review the manner in which departments are administering the freedom of information (FOI) process, to ensure that the government is accountable and open in accordance with the spirit of the Freedom of Information Act and calls on the Premier to explain why he has allowed a culture of arrogance, secrecy and of deliberately keeping information from the public to develop among his cabinet ministers when dealing with FOI requests.

HON SIMON O'BRIEN (South Metropolitan — Minister for Transport) [2.07 pm]: In my opening remarks the last time we were debating this issue I indicated that the mover of the motion, in my opinion, was poorly motivated. Indeed, as we listened week after week after week to her contribution, it soon became clear that there was an absence of information that she was prepared to offer that actually gave any substance to the allegations that she was making. That was hardly surprising. As I reminded the house at the time, the motion itself has actually been on the books since March 2009. It was one of a number of motions—eight or nine, I believe—placed on the notice paper by the same member on the same day, and all of them condemning in turn the Premier, the government or some combination, of some crime against the dear member's sensibilities. In this case the house was invited to condemn the Premier, back on 18 March 2009, for a number of offences, in the member's mind, against the freedom of information process. In her extensive comments in support of the motion, it was interesting that a lot of the history that she recounted in support of her proposition that the Premier be condemned stems from activities that have happened long since the date when the motion was first moved back on 18 March last year. That just shows the insincerity of the mover right from the start: "In due course I'm going to have a grizzle about the government's action on FOI, so I'll get in ahead of the rest of the house and every other member and I'll put my notice of motion on the notice paper"—this was back on 18 March 2009—"before the alleged offences have even occurred, just to show how far ahead of the game I am." The unfortunate thing, of course, is that a year later—in fact, it is now 13 months; that is how long ago we started this debate—when we have heard from her for about four hours, she was not able to come up with anything substantial in support of her own motion.

Hon Peter Collier: But caucus approved all this. Caucus approved her putting these motions on the notice paper. It did, didn't it? Caucus approved this.

Hon Ljiljanna Ravlich: Of course it did.

Hon Peter Collier: It went through caucus, so the ALP approved these ridiculous motions.

Hon SIMON O'BRIEN: It is going to get better.

Hon Ljiljanna Ravlich: And you have been so lazy that you couldn't manage to put anything on the notice paper. You were lazy in opposition and you are lazy in government.

The PRESIDENT: Order! This is a debate under the standing orders of the house. It is not a cross-chamber discussion. One person has the call, and that is the Minister for Transport.

Hon SIMON O'BRIEN: There is not a lot of relief in sight. We can draw some comfort from the fact that because of the sessional order that we are now operating under this week, at the end of the two hours or so allocated for this debate today, this wretched and pointless motion will finally be put to bed one way or the other. However, we then do not have much to look forward to, because the next item is another motion condemning the Minister for Environment and the Minister for Mines and Petroleum.

Hon Adele Farina: Let's debate the motion that we're currently dealing with. We can all read the notice paper.

Hon SIMON O'BRIEN: There is a key theme here, Mr President. We then have motions condemning the Premier for a whole lot of things. All these motions were placed on the notice paper on 18 March last year. Indeed, I suppose we are going to be treated once again to a pointless, poisonous and vindictive diatribe —

Hon Peter Collier: And inaccurate.

Hon SIMON O'BRIEN: And inaccurate diatribe from the member about all these things. The relevance to today's debate of making that observation is to show the insincerity with which the debate was loaded up by the mover right from the start. I asked my staff in my ministerial office to look at whatever points had been raised by Hon Ljiljanna Ravlich, because, despite what she seems to want to say, I am concerned to make sure that I comply with the responsibilities that I have under law. Therefore, my staff went through this massive amount of

information, and I have been through it and the *Hansard* record of what was said, and we could not find much that was specific in what had been alleged.

There was one brief concern. Whether this merits the time of the house, only Hon Ljiljanna Ravlich can possibly say, but it was about whether names of ministerial officers, other than other chiefs of staff, should or should not be deleted from documents provided under FOI, having regard for clause 3(1) of schedule 1 of the Freedom of Information Act, which states that —

Matter —

In the case of the names of chiefs of staff and other ministerial officers —

is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).

That is what the act says, and this is what the member was concerned about. Therefore, I thought, “Heck, if she wants to raise it here, it must be important. We’d better have a look at this.” That is what we found; that is the provision. In some cases, when documents subject to FOI are presented, compliance with that schedule and that clause is achieved by deleting a part of the address matter that could be taken to reveal personal information—for example, a direct mobile telephone number, a personal email or a signature.

When I look at these FOI requests that have been dealt with in such a way, I permit myself an inward smile, as does the person who is presenting the documents for my consideration, because, let us face it, if a person is an officer in a ministerial office, does he or she really care about such things? There are probably copies of letters with that person’s signature on them quite happily sent out to the same member. That member would not have to be very resourceful to work out what that person’s personal email address is, given that for most people it might be john.smith@dpc.wa.gov.au. It all goes to a fairly predictable formula. So what is so secretive about that?

Hon Adele Farina: And the act does not require you to delete it.

Hon SIMON O’BRIEN: The only thing that we could possibly have regard for could be a mobile phone number that, for whatever reason, may need to be kept confidential. But, apart from that, it does not amount to a hill of beans, and it is certainly not worth raising a debate in here for hours and hours to say that the government has somehow done the wrong thing if it is observing this particular clause. I always look at the response to any FOI application before it goes out because I am required to approve it. There might be a big pile of documents—quite often there is—with a whole lot of markers at the side to delineate all the documents that have been demanded for accountability purposes on the latest ALP fishing expedition. I look at it, and what I am looking for is not what the applicant is getting; I do not go through those documents. I will outline who goes through them in a minute.

Hon Ljiljanna Ravlich: You’re breaking my heart!

Hon SIMON O’BRIEN: It is like breaking rocks, then, out in the midday sun. This is just the evidence that this member does not take this matter seriously, yet she was prepared to inflict it on us for hours.

Hon Ljiljanna Ravlich interjected.

Hon SIMON O’BRIEN: She should go and have a saucer of milk. Get a life. Is that the member’s contribution to the debate, is it? It is pathetic.

When I look at a pile of documents, I am not going through those documents to say, “Oh, heck, we’re not going to give them that”, as would be alleged by some members of the opposition. No, I am not doing that. I do not even look at those documents. What I look for is a note to me from my officers saying that there has been some exemption in a document. Therefore, I look at it, and any exemptions that have been claimed are typically under this little clause 3(1) of schedule 1. Again, I give a wry smile, and I look at my staff member, and we look at each other and say, “Yes, but who cares?” However, that is the procedure. What I am really looking for, of course, are any documents that we are substantially claiming as exempt, because that is the thing that I want to make sure we are absolutely right. All the other stuff that is going to the applicant, fine—whatever it says. I do not look through any of that to see whether there is something that I do not want the applicant to have. That would be improper. However, I do look at the things that have been claimed as exemptions to make sure that we are justifiably claiming that. Therefore, in relation to the first matter that the member is so concerned about, I have to say, and I think most people would say in listening to it, so what? Who cares? Is that worth moving a substantive motion condemning the Premier? I would not have thought so.

Why is it done in this way in my office? It is done in this way because we are absolutely scrupulous in my ministerial office about how we conduct freedom of information responses. We observe scrupulously what the law prescribes and the custom and practice that has been formed, whether or not we like it, whether or not we think it is a bit silly, and whether or not we think it is pointless. They get what is required.

Hon Ljiljana Ravlich: It's not up to you to determine whether or not it's silly, under the act. You don't decide whether or not it's silly!

Hon Michael Mischin: You wouldn't have a clue about knowing what silly was. We will get to some of those. You're just a frustrated minister.

The PRESIDENT: Order; we do not need interjections of a personal nature.

Hon SIMON O'BRIEN: The member has also seen fit to deride and belittle staff of ministerial offices, including mine, because of what she says are inconsistencies and so on. Again, I say no. We are scrupulous in my office, and I know that my staff are scrupulous about consistency. That is why they pursue matters in the way that has been established, regardless of whether some people might want to argue about whether it is 100 per cent necessary. That is what the law says; that is what the practice is—that is what we do. If Hon Ljiljana Ravlich thinks a different law applies to us than to the former government, again, she should not apply that sweeping allegation to my office, please. My executive officer, incidentally, is off on maternity leave and is actually delivering her child as we speak; I understand she is in the delivery ward now. I mention that as pertinent not only because it is some good news to spread—it is nice to know that Mrs Danielle Reid, my executive officer, is doing that at this time, which is something worth celebrating—but also because it is interesting that the child was not even conceived three months before we were given notice of this motion, but I do not want to digress.

Several members interjected.

Hon SIMON O'BRIEN: My executive officer, or the person acting in the position at the moment for the reason that I just mentioned, is, as I mentioned before, very scrupulous about the application of the law, as is the person in my office who does a lot of the legwork—it is a lot of work—in collating the various documents that have to be sourced in response to the opposition's fishing expeditions. We generally receive very imprecise requests for information; they are just looking for a volume of matter in the hope of finding something. The funny thing is that although we are not living up to the standards of the previous government—according to the mover of the motion—the member of my staff who is doing a very large quantity of that work in my ministerial office is the exact same person who was doing the exact same job under my predecessor, Hon Alannah MacTiernan. That staff member used to receive my freedom of information applications, and there was a very cordial working relationship between my office and her. Let us not say that there has been some change in the way that the rules have been applied since the change of government; they are exactly the same.

Hon Peter Collier: Can I just interject there just for a second?

Hon SIMON O'BRIEN: Please do; I am getting bored with it.

Hon Peter Collier: Just to reinforce what I said in my contribution, my executive officer used to be the executive officer of Hon Ljiljana Ravlich!

Hon Ljiljana Ravlich: Get on your feet if you've got something you want to say!

Hon Peter Collier: I have already said it!

Hon SIMON O'BRIEN: I will entertain the Minister for Training's interjection. Is the minister saying that his executive officer responsible for responding to FOI requests to his office is the same executive officer who was responsible for former Minister Ravlich's FOIs?

Hon Peter Collier: Absolutely! I mentioned that in my contribution. Additionally, the executive officer of the current Attorney General was the executive officer of the former Attorney General, Hon Jim McGinty!

Hon SIMON O'BRIEN: Wow!

Hon Peter Collier: Yes; terrible, isn't it?

Hon Norman Moore: And my FOI officer worked at Jim McGinty's office!

Several members interjected.

Hon SIMON O'BRIEN: The other specific allegation, because there are only two —

The PRESIDENT: Order; let us not go right through the public service.

Hon SIMON O'BRIEN: The only other allegation was that we ministers routinely, repeatedly and regularly missed the statutory 45-day deadline for the delivery of documents. I assure members that we take those deadlines very seriously as well. Of the 27 FOI applications my officers have received from the opposition since 26 September 2008, 18 decision letters were sent before the due date, which is not regularly and routinely disregarding the date—the vast majority were sent before the due date; three decision letters were sent on the due

date; and six decision letters were sent after the due date. Of those 27 FOI applications, five requests for extensions of time were sought; of those, two of the decision letters were ultimately sent before the due date and three decision letters were sent after the due date. Again, if there is a problem with meeting the due date, my officer contacts the applicant and negotiates an extension. We were elected, to some extent, on the need to act in good faith, I think the term was, and to cooperate, and my office does all those sorts of things. If there is a deadline that is looking as though it might be difficult to meet, contact is made with the applicant to see whether we can work out something by amicable arrangement, and that has generally been achieved on the few occasions that it has been required.

Why would it be necessary for that to happen sometimes? Sometimes the amount of material requested is very, very broad indeed. FOI requests from members opposite have, on some occasions, been quite extraordinary. The sort of thing I mean is a request for all correspondence of any type between my office and any other ministerial office or officer dealing with any election commitment or election promise or budget announcement since 23 September 2008.

Hon Ljiljana Ravlich: A lot of ministers did not have any!

Hon SIMON O'BRIEN: In response to that, it is tempting to ask the member to just come in, and we will stand back, open all our cupboards and drawers and filing cabinets, and give her access to our computers, and she can just go for her life and have a good old rummage around and see what she can find, because that is about the extent of what she is talking about. That is an unreasonable and silly request. Then, if the member has trouble with that, I would not be surprised if she gets a different response from different officers about that for all the right reasons—not because there is anything sinister going on, but because these are honest, hardworking officers trying to work out how best they can comply with an outrageous and ultimately stupid request. That is not what FOI legislation is for, just because the mover of the motion is so lazy that the only tool she has at her disposal is to put in FOI applications for anything we have got and then trawl through it to see whether she can find a line or two that she can take out of context and say, “Oh, look, the government is up to no good.” That is a very lazy way of going about opposition. The shadow ministers need to get out and connect with the sectors that they are meant to shadow. I know it takes some long and hard yards. I have done it myself. That is the only way they are going to find out what is going on, not by this trawling process of going through FOI. There is no rhyme or reason for it. I went off crook after about a week in the job. I came back before the end of October, about five weeks after we got in, and already there was an FOI in the offing for any decisions that had been made about some matter or other. I literally had not been present to attend to that. Perhaps when there are no documents forthcoming, this opposition might say that this is proof that the government is up to no good. It is kidding itself if it thinks that. There is a realistic expectation. Similarly, if the opposition thinks that it can find out what is going on by going on a fishing expedition and casting the net so broadly, I do not think it will find the direction that it is so sadly lacking.

I know that other members are keen to contribute to this debate so I will wrap up. As I said, there have not been too many allegations against my office or me or my staff to respond to. The volume of time that was spent attacking us did not give rise to any substantial allegations, and I have responded to them in the manner that I have. As we can see, the member moving the motion has been left with nothing. She reckons she has a handful of aces; she does not even have a pair of twos! Frankly, the prospect of a motion to condemn the Premier for what has just been exposed as a non-offence reflects worse on the mover than it does on the government. If anything, it is just to the contrary. The only benefit that I can see out of this is getting some opportunity to reassure the public through the Parliament that the officers who are working in ministerial offices to attend to FOI matters are doing so diligently and honestly and they do not deserve some of the allegations that have been directed to them.

There were two special moments in this debate. The first was when the mover of the motion finally sat down. That was a blessed relief. Heaven forbid if she does not get a right of reply. I would hate to think that, in their enthusiasm, members might use up the time allocated so she does not get another go. Hopefully, we will get a response from Hon Ljiljana Ravlich, in which she can make an apology for the silly motion that she moved. In the meantime, the other bit that I liked was the reference to how bad the process is. The honourable member applied for access to the Premier's diary under the Freedom of Information Act. The Premier's diary is not just some little booklet with 1 January on the first page and 31 December on the end page. It is a detailed document containing a lot of information across many pages, including who is involved et cetera. It is not necessarily a simple request. According to what the member said, if I recollect *Hansard* correctly, the Premier's office said that that was difficult and asked the member to say what she wanted or where she wanted to focus. She was asked to narrow the scope of the search to make it easier and quicker to comply. In a spirit of goodwill, the honourable member said that there was nothing she was particularly interested in, so she just nominated a two-week period. It shows that she was not after anything in particular and she had not done her homework. It gives substance to my claim that she has been lazy because the two weeks of the Premier's diary she picked was when

he was out of town overseas. That shows that the member had no reason in the world for doing that. She was just fishing and out to create mischief. She got up in this place—I am referring to the *Hansard* record—after she got the two-week period of diary entries and found that for a large portion of that time the Premier was in Japan. She stated —

Basically, I received a series of almost blank pages. Where was the good faith in that negotiated outcome?

She asked for those two weeks of diary entries and she got them, yet she wants to complain about it and claim that the Premier's office had done the wrong thing. What should the Premier's office have done, according to my good friend Hon Ljiljana Ravlich? She asked the rhetorical question —

Where was the good faith in that negotiated outcome?

The good faith, of course, was that she got what she asked for. She went on to tell us —

After negotiation and conciliation with the Office of the Information Commissioner's delegates —

It is bigger than *Ben Hur* now —

I narrowed the scope of my application for the Premier's diary from about two months—or whatever it was—down to two weeks.

It almost brings me to tears to repeat it but I will quote Hon Ljiljana Ravlich, who reported to the house —

Instead of saying to me, “Hey, look, Ljiljana”—Ms Ravlich or Hon Ljiljana; whatever—“we've got a problem here. Given that you've shown good faith and narrowed it from a couple of months down to a couple of weeks, the Premier was actually in Japan during this period; how about choosing a different couple of weeks?”

If she does not have any luck in the first go at the lucky dip, she should dry her eyes and come and have another go for free! Hon Adele Farina must now understand why I made passing reference to those other motions that are on the notice paper. That is the sort of stuff that we have to look forward to from here until next Pancake Tuesday.

Let us put a positive gloss on it because we will not be disheartened. Life is still pretty good. If the worst thing that we have to do is put up with more of Hon Ljiljana Ravlich's motions, we will tough it out. We will do that because, as I have demonstrated with this debate, this government is accountable. It has no need to recoil from examination of how it conducts its affairs in this or any other matter. How do we know that? After weeks of this debate, the opposition has not put up one substantive non-rebuttable argument in support of its allegations. That is the proof of it. One either has to put up or shut up when making these sorts of allegations. I am confident that the government that I am a part of can face that sort of scrutiny with confidence. I hope that members will not dominate the limited time that is available so that Hon Ljiljana Ravlich will get the chance to stand up once again and make an apology.

HON ADELE FARINA (South West) [2.39 pm]: The comments of the Leader of the House on this debate have caused me to want to stand to speak on this motion, and I also do so at his invitation. The Leader of the House made a number of statements and a number of attacks on Hon Ljiljana Ravlich in relation to this motion and her debate on the motion. When I interjected, the Leader of the House invited me to speak and I now take up that invitation.

Hon Norman Moore: Can I withdraw that?

Several members interjected.

Hon ADELE FARINA: I will not only respond to some of the outrageous statements the Leader of the House made, but also inform members of some of my experience—within the time available—with the freedom of information process, why I think that there are some serious concerns about how the government is implementing the FOI process, and why I am prepared to stand and support Hon Ljiljana Ravlich in her motion on this important matter.

From my experience what I have witnessed from some ministers at least is a complete disregard for the freedom of information process and for their obligations under the act. I think that that is worthy of serious debate and consideration by this house, despite all the good humour that has gone on in this debate to date. I think that this disregard by ministers for the FOI process has been further illustrated by the nature of the contributions that a number of ministers have made to this debate whereby they have not really sought to address the issues at all. I also foreshadow that I will later move an amendment to the motion.

The Leader of the House made a number of references in his address to the Office of the Information Commissioner's annual report 2008–09 and he encouraged members on this side of the house to read that report.

The Leader of the House will be pleased to know that I had not read the report until he suggested that I do so, but I have now read the report and I found it very interesting. What I found out from reading the report is that the Leader of the House was actually very, very selective in the bits of information that he chose to share from that report. Hon Giz Watson has already brought to the attention of the house a number of other aspects of that report that the Leader of the House sought to overlook. I intend to go through a few more of the statistics and comments contained within that report so that members in this house can be better informed.

In the overview of the annual report provided by the Information Commissioner himself, in very large bold font is the following statement —

“The rights of citizens to access government information remains a fundamental element of a robust democracy.”

That is a very powerful statement that goes right to the heart of democracy and this statement is actually embodied in the Freedom of Information Act. It is a fundamental right that enables citizens to participate more effectively in the governing of the state and to make state and local government bodies and officers accountable to the public. However, experience has shown us that this government has very little regard for and a very poor understanding of the FOI law, and a very poor regard for the rights of Western Australian citizens in relation to the FOI process, because government members have treated this whole debate as a joke. At the end of the day, ultimately the government has a disregard for democracy itself in this state. Some ministers in this government have shown a preparedness to go to great lengths to frustrate the FOI process and to withhold documents and information from the public. Despite promises made before the election, what we have actually seen is to the contrary; this government is actually less accountable and less open than any government I have ever experienced.

The Leader of the House referred to some statistical data from the annual report about the number of freedom of information applications by members of Parliament. He noted that there had been an increase in the number of FOI applications by members of Parliament from four in 2007–08 to 80 in 2008–09. He alleged that this illustrated an abuse of process by members of the opposition and, in particular, Hon Ljiljana Ravlich. Talk about drawing a really long bow and adding two and two and getting five. In my view, the Leader of the House and other cabinet ministers should hang their heads in shame at those figures because I think the figures actually illustrate a very different conclusion from the one drawn by the Leader of the House. The annual report also indicates that most of the 80 appeals or complaints lodged by members of Parliament are against decisions of ministers—not agencies, but ministers. Contrary to the suggestion advanced by the Leader of the House, these statistics illustrate that members of Parliament are having to resort to the freedom of information process to get information and even then ministers think that they are above the law and refuse to provide the information, which is necessitating the appeals to the Information Commissioner.

Hon Norman Moore: How many are being upheld?

Hon ADELE FARINA: I would love to be able to answer that but the commissioner has not got on with his job because there are that many outstanding appeals —

Hon Simon O'Brien: So many that the commissioner cannot keep up with his job!

Hon ADELE FARINA: We will get to that in a minute. Therefore, the true explanation for the rise in complaints to the Information Commissioner is the fact that this government is blocking, frustrating and refusing to release documents, thus necessitating the need to appeal to the FOI commissioner to access that information because, at the end of the day, we do not have any other option open to us other than to appeal to the FOI commissioner.

Hon Michael Mischin interjected a number of times during debate —

Hon Simon O'Brien interjected.

The PRESIDENT: Order!

Hon ADELE FARINA: — in previous weeks saying, “Look, as members of Parliament why don’t you simply ask parliamentary questions rather than lodge FOIs?” Right on cue, as the government can always count on its Treasurer to do, the Treasurer put his foot right in it. That same day I asked him, in his capacity as Minister for Housing and Works, a very reasonable parliamentary question about the process for the new tender for maintenance works on Department of Housing properties. In response to my question for the minister to table the procedure and guidelines for that tender process, the minister arrogantly told me that the information may be available through FOI—I stress the word “may”. That was his answer! Therefore, we ask questions in this house of ministers but are told to seek the information through the freedom of information process. I think that is a disgraceful response from a minister. If a minister is asked to table a document, the minister should table the

document; he has an obligation to do so and to keep this house informed. To then criticise us for using the freedom of information process, when the government forces us to use the FOI process, is an absolute disgrace.

In addition to that, I will provide another example about why we have to use the freedom of information process; that is, because ministers are refusing to provide briefings. Requests for briefings are simply being denied.

Hon Simon O'Brien: Name one.

Hon ADELE FARINA: I will name one; I will give the member that example. I asked for a briefing on the Bunbury waterfront development. The Minister for Planning approved the briefing and it was arranged by his office. Two days before I was to have that briefing, the minister's office phoned me and said, "Oh, look, sorry about this but the briefing's cancelled. The minister's changed his mind. You can't have a briefing by DPI staff in Bunbury; the minister requires you to be briefed by the Director General, which means you have to come to Perth for the briefing, and, by the way, he's tied up for the next month, so you're going to have to wait a month for the briefing." By that time line, the Greater Bunbury Region Scheme amendments would have been released, I would have been able to read the documents for myself and I would not need the briefing anymore—talk about trying to frustrate the process! When we were in government, I chaired a number of working groups for government on a range of issues in the south west. Whenever I was asked by a member of the then opposition for a briefing, I ensured that either I or a member of the department provided that briefing. The same courtesy is not being provided to members of the opposition by this government, so we are required to rely on processes such as the FOI process to access information. Members of Parliament should have greater and easier access to information, and that is not to mention whatever the government is doing to members of the public who seek information.

It is interesting that the Leader of the House did not make reference to the annual report's statements about charging for the freedom of information process. Apparently the amount of charges for processing FOI applications has risen since 2005 by a massive 170 per cent, despite the number of non-personal applications during the same period having risen by only 77 per cent. In addition, the annual report goes on to state that over the past two years the total amount of charges reduced or waived at the discretion of agencies has dropped significantly.

We are therefore seeing a real shift in the attitude to FOI applications, which is evident also in the charge for FOI applications. From my experience, it appears to me that the government's FOI policy is, firstly, use every means available to frustrate and delay the processing of an FOI application; secondly, whenever possible find a basis on which to refuse the release of a document; and, thirdly, having exhausted the first and second means, resort to charging the full amount possible under the act as a means of deterring access and frustrating the democratic and lawful process set out under the act. That is what is happening under this government, and the government should hang its head in shame over this.

Hon Norman Moore interjected.

Hon ADELE FARINA: Interestingly, the report goes on to state that the FOI commissioner has not received many appeals on charges levied and draws a conclusion that this suggests that the charges do not represent a significant barrier to the process. It is a concern to me that the FOI commissioner would jump to this conclusion without proper investigation and review. I suggest that the reason is probably that by that stage people are so exhausted by the process and have lost faith in the process that they are just prepared to give up and walk away or surrender to it.

Another aspect of the annual report which the Leader of the House failed to bring to members' attention is that of the 72 appeals that have been lodged against decisions of ministers in 2008–09, only 12 were processed that year. This is a disgrace. Hon Ljiljana Ravlich informed members that a request by the Office of the Information Commissioner to government for two additional staff to assist in processing the backlog of appeals was refused by the government. I wonder why. This is just another means that the government is using to frustrate the FOI process; and the Leader of the House would have us believe that this government is not playing politics with the FOI process.

Hon Norman Moore: How many of them do you think have actually been upheld?

Hon ADELE FARINA: Why does the government not fund and resource the FOI commissioner so that he can do his job?

These are the facts that are provided by the FOI commissioner's annual report of 2008–09. I look forward to see what the 2009–10 annual report will say. I am sure it will further highlight deterioration under this government.

I will move on and respond to some of the issues raised by the Leader of the House in his address. Hon Ljiljana Ravlich highlighted the inconsistency in the way different ministers apply the FOI provisions, in particular how different ministers make different decisions on the release of exactly the same document. In some cases it is

released in full; in other cases it is edited; and in other cases exemption is claimed for the document. I can support the statement made by Hon Ljiljana Ravlich, as I have had that experience as well. The Leader of the House tried to explain this away by saying that the FOI officer is required to apply a subjective test; hence the reason for this variation. The bottom line is that the Leader of the House is wrong. The test to be applied under the Freedom of Information Act is an objective test, not a subjective test. In fact the FOI act states in great detail in the schedule exactly how the minister is to apply that test; therefore, the level of variance that we are experiencing should not be there at all and it is not right to simply dismiss it as a subjective test.

Hon Norman Moore interjected.

Hon ADELE FARINA: It is not a subjective test; it is an objective test that is required to be applied under the FOI act. If the Leader of the House continues to think that it is a subjective test, I respectfully suggest that he read the act, get acquainted with it and perhaps get some legal advice on the issue.

Hon Norman Moore: How do they decide what the public interest is? How come that's not subjective?

Hon ADELE FARINA: The level of discrepancies between decisions by different ministers on the same document raises some serious questions. As stated by Hon Ljiljana Ravlich, either ministers are incompetent, have an arrogant disregard for the law or are intentionally seeking to frustrate the lawful access to the documents.

The Leader of the House displayed, in my view, a misplaced sense of pride and righteousness in saying that he does not involve himself in the FOI process at all and that he does not get involved at all in the judgements about FOI applications and leaves that to his FOI officer. The bottom line is that it is not open for the Leader of the House or any other minister to simply leave it to the officers in their office to deal with the FOIs. The FOI act requires that ministers oversee the proper administration of the FOI act by their staff. Under the act, it is the minister who is required to make a decision on FOI applications and the minister needs to satisfy himself or herself that all reasonable means have been made to access the documents requested by the FOI access applications, and that exemptions, if claimed, have been correctly and lawfully claimed. The minister does not get to delegate this to a member of his staff and to take a hands-off approach to the processing of FOI applications. The glossary to the FOI act makes it very clear that in relation to ministerial offices all reference to "agency" in the act means a minister, and all reference to "principal officer" of an agency means the minister. Ministers cannot delegate their decision making under the FOI act to an officer in their office; the responsibility rests with ministers. On this point it is interesting to note that in some cases, ministers sign the decisions that are made on FOI applications, and in some cases they get their staff to sign them. I think that raises some really interesting legal points, but I will leave that for another day.

The Leader of the House also commented that it takes a vast amount of time, effort and energy to process FOI access applications and that the reason for this is that all third parties need to be contacted. He said that he frequently has meetings of 27 or more people and that if such a meeting were to fall within the scope of an FOI application, he would be required to contact all those 27 people to get their consent to their details being released.

I draw to the Leader of the House's attention section 35 of the FOI act, which provides that an agency may apply to the FOI commissioner for approval to waive the applications of sections 32 and 33, which require consultation with third parties, and that the commissioner may give approval for this requirement to be waived on being satisfied that it would be unreasonable to require the views of third parties to be obtained, having regard to the number of third parties that would have to be consulted, and that the document does not contain a matter that is exempt matter under clause 3 or 4 of schedule 1.

I also draw to the Leader of the House's attention clause 3 of schedule 1, which provides that details of the person's name, position or things done by that person when that person is an officer of an agency is not an exempt matter. In response to Hon Simon O'Brien's contribution to this debate that ministers would need to go through documents and cross out the email addresses of departmental officers and ministerial staff or their position titles, I say that, as clearly specified in the schedule to the act, they are not required to do that and it would take a lot less time in processing the FOI application if they stopped doing that, because we can work out what the email address is. We have all been around for long enough to know that it is their first name, their surname and the department address. So, why bother whiting it out? This makes absolutely no sense to me.

Hon Ljiljana Ravlich: Tricky, tricky, tricky!

Hon ADELE FARINA: It is not even tricky; it is just plain silly.

Hon Peter Collier: You are wrong again, Ljil!

Point of Order

Hon LJILJANNA RAVLICH: I do object to the member calling me “Ljil” across the chamber. If he wants to address me, then he should do it in the proper manner.

The PRESIDENT: Members know that they must address other members according to their proper title. I think that is well understood and should be adhered to.

Hon Peter Collier: Thank you, Mr President.

Hon Ljiljana Ravlich: Smart alec!

Hon Peter Collier: Wrong again, Hon Ljiljana Ravlich!

Debate Resumed

Hon ADELE FARINA: I was just moving on to the issue of the 45-day requirement, which is stipulated in the FOI act and which requires agencies to make a decision on an FOI application within 45 days. I find it interesting that many government ministers consider this to be a joke and not a requirement that they must adhere to; and that, if they do not adhere to it, they find it a minor failing of no consequence. However, it is a stipulation in the act. I draw the attention of ministers and members to section 13(3) of the act, which expressly states that FOI access applications must be processed within 45 days unless it is otherwise expressly agreed between the agency and the applicant or allowed by the commissioner pursuant to subsection (4) or (5). It is a legal requirement for FOI access applications to be processed within 45 days. For ministers to suggest that a failure to do so is of no matter or of no consequence is arrogant and again illustrates that this government and its ministers think that they are above the law.

I have had the same experience as Hon Ljiljana Ravlich in that more often than not the 45-day requirement is not complied with. I have even experienced the situation in which officers from ministerial offices have contacted my office and sought an extension of time but have not bothered to stipulate how much additional time they want—it is just this open-ended request for an extension of time. When I have asked, “How much more time do you want?” there have been occasions when I have not even had a response to the request and they have just gone and taken as much time as they like. That is how little regard this government has for the processing of freedom of information applications.

Section 13(2) of the FOI act expressly states that if an agency has not processed an FOI application within the stipulated 45 days, it is taken that the application has been refused and the applicant is entitled to lodge a complaint with the FOI commissioner. If ministers want to reduce the number of appeals to the FOI commissioner, they should focus on fulfilling their obligations under the act and make a decision on FOI applications within 45 days. That would greatly reduce the number of appeals that the FOI commissioner has to deal with.

Another aspect associated with the 45 days is a concept that has come in under this government; that is, when we are asked to narrow the scope of an application, the minister’s office also informs us that the clock has stopped running on the 45 days. This is an absurd concept. There is absolutely no provision in the act that enables the clock to stop running. The FOI commissioner has even made a ruling on that, yet ministerial officers continue to say, “While we are asking you to narrow the scope of the application, the clock has stopped running.” It is a nonsense.

I want to turn to my experiences with the FOI process and the withholding of information by ministers in particular. I will have to restrict myself to a few examples because time will not permit me to detail all of the experiences that I have had. Suffice to say I now have 12 appeals before the FOI commissioner. Most of those appeals have been before the commissioner for more than nine months. It is a completely unacceptable situation that a person needs to wait more than nine months to have the FOI commissioner determine an appeal. That is in addition to whatever absurd length of time it has taken to get the FOI application to that point. In some cases it takes three to six months just to get to that point. It is completely unacceptable. It is against the spirit of the FOI act and the objectives of the FOI act. For this government to sit here and suggest it is an open and accountable government and it is adhering to the spirit of the FOI act, when we have these ridiculous delays in getting responses and access to information, is just a ridiculous comment for it to make.

I will deal with one particular FOI application that I think members will find very interesting. On 24 February 2009 I lodged an FOI application with the Minister for Health for the release of documents relating to the Busselton hospital for the period September 2008 to February 2009. It was a very short period of time. On 27 February I received a letter from the minister’s office asking that I narrow the scope. On 9 March I replied, narrowing the scope to the “proposed new Busselton hospital” because they had incorrectly implied that I wanted details on the current Busselton hospital. That was fair enough. I narrowed it to the proposed new Busselton hospital.

On 18 March I received a phone call from the minister's office saying, "No, no, no—there are hundreds of documents that fall within that scope so you are going to have to narrow it further." I again narrowed the scope of my FOI application by identifying the type of documents that I wanted and the parties who either wrote or received the documents or correspondence. That was faxed to the minister's office in order to try to hurry up the process. Dated the very same day, but received by my office three days later, was a letter saying, "No, sorry; you've got to again further narrow your scope because it's still too wide. There are hundreds of documents that fall within the scope you have set out." Specifically, the letter from the minister's office asked me to identify the particular documents—in particular that I identify the subject matter of the correspondence between the Busselton hospital and the minister. As I had narrowed the scope of my FOI application from the "Busselton hospital" to the "proposed new Busselton hospital" and I had not actually requested any correspondence between the Busselton hospital and the minister, this request was a nonsense. The very thing that the minister was asking me to do was well outside the scope of my FOI application.

The second thing I was asked to do was to state the specific concern, incident or meeting of interest. I had already stated the specific concern, and that was the proposed new Busselton hospital. My narrowed scope did not request any information about any meetings or any incidents. Again, this request was a nonsense. The third aspect of that letter asked that I identify the particular operations of the Busselton hospital that I was most interested in. Again, I had already changed the scope from the "Busselton hospital" to the "proposed new Busselton hospital" which of course has not been built and is not in operation. I have no idea what operations I was required to identify in order to narrow the scope further. The letter from the minister's office requesting that I narrow the scope was just an exercise in frustrating the process; slowing it down to make sure that I did not get access to the documents in a timely manner.

On 30 March I replied, pointing out that I had narrowed the scope of my FOI application. However, in the spirit of good faith I indicated that I would further narrow it down. I specified three particular things I wanted. I narrowed the scope from the Busselton hospital to the proposed new Busselton hospital and identified the correspondence specified between parties, which I had done previously. I identified three particular issues: the site selection in relation to the proposed new hospital; what was actually going to be built, what services and facilities were to be provided as part of the new Busselton hospital; and the issue of contamination of the current Busselton hospital site.

On 18 May, about six weeks later, I received an email from the minister's FOI officer asking for an extension of time to assess the application. The email simply asked for an extension of time of one day. This was three months after I had lodged my FOI application—well after the 45 days had been exceeded. I was now being asked for an extension of time of one day. I granted the extension of time. Three days later—not one day later, but three days later—I received a letter from the minister's office stating that my FOI application had been refused. This is three months after I started the process. The reasons for the refusal were that the minister had identified 117 emails sent and received by two of his policy officers. A further 18 documents had been identified and he expected that other members of staff would also have documents and emails falling within the scope of the FOI application. He concluded that he expected that the number of documents within the FOI application were likely to fall into the hundreds. The minister relied on section 20(2) of the FOI act, which states —

If ... the work involved in dealing with the application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency may refuse to deal with the application.

The minister went on to specify the reasons for refusal: there were hundreds of documents that fell within the scope of the FOI application; he had a staff of 12 and only one officer handled FOI applications but that was not her primary responsibility, it was her secondary responsibility, and she had a whole list of other duties that were her primary duties; and the FOI officer was currently dealing with eight other FOI applications—a point that, in my view, was totally irrelevant to the processing of my application. Clearly with that decision by the minister to refuse my application, I immediately lodged an appeal with the FOI commissioner; which, to no surprise, is still outstanding. It is now nine months later. I am still waiting for a decision on that appeal to the FOI commissioner. In my view, as I have stated previously, this is a completely unsatisfactory situation. However, in addition to lodging the appeal with the FOI commissioner, I also decided to separate my narrowed scope FOI application into three separate FOI applications covering the three areas that I previously mentioned—an FOI on the site selection; an FOI on the contamination of the current site; and an FOI on the proposed new Busselton hospital in terms of whether it was being built new or the existing hospital is being refurbished, and what services and facilities would be provided. I had separated the freedom of information application into three parts. Members will recall that that was the final stage I had got to in narrowing the scope for the minister.

In relation to the first of those FOI applications, which related to the refurbishment of the facilities, I had the minister's decision on 18 August. He identified only 12 documents. Six documents were provided by one of the other separate FOI applications, four documents were released in full and two documents I had access to. In

relation to the second FOI application, on the site contamination, the minister identified four documents falling within its scope. Two were released in full, one document was released under a separate FOI application and one document was refused. In relation to the third FOI application, on site selection, the minister identified 37 documents as falling within its scope. Fourteen were released in full, two documents were not released and for 21 documents I had edited access. Across the three FOI applications, a total of only 53 documents were identified, seven of which were identified twice, making it a total of 46 documents. In refusing my initial FOI application, the minister said that he had identified hundreds of documents, including at least 117 emails as falling within the scope of the FOI application and that processing that amount would divert many resources, so he refused the application. Yet when I separated that FOI application into three separate FOI applications, covering exactly the same request, the minister was prepared to process the three separate FOI applications covering exactly the same scope of the application, and only 46 documents were identified and released as falling within the scope of those three FOI applications. We moved from hundreds to 46. If that is not a joke and a disgrace, I do not know what is. I never got to see the 117 emails identified as falling within the scope of the application. I can assure members that I did not get anywhere near 117 emails released through that process by the time I finished with it.

Either the minister initially overstated the number of documents falling within the scope of the FOI application, in an effort to be able to say that he would exercise his rights under the Freedom of Information Act and simply refuse to deal with the FOI application and that would frustrate the applicant because I would not be receiving the documents or, despite having separated my request into three FOI applications, all the documents that the minister had identified as falling within the scope of that FOI application had not been released. I do not know which one of those options members want to pick, but it can be only one or the other. In either case it is a completely unacceptable situation. It clearly highlights what is happening under this government with the FOI process.

If this is not enough to raise concerns with members, let me now draw members' attention to another aspect that is related to this FOI application. Members will recall that I lodged my initial application with the minister in February 2009. On 31 March 2009 a community group lodged an FOI application seeking all documents on the Busselton Hospital. This application was in essentially the same terms as my initial FOI application that the minister refused. However, the minister did not ask this community group to narrow the scope of its FOI application, nor did the minister refuse the application on the basis that hundreds of documents fell within the scope of that FOI application. The minister released the documents to this group three weeks before releasing the documents to me, and I am told that there is no political interference with the FOI process under this government! I find that very, very hard to believe. This is a very clear example of a minister frustrating the FOI process and dealing with two similar FOI applications, with the same subject matter and scope, in very different ways. The minister's actions illustrate a clear intent to deliberately frustrate the FOI process and my access to those documents. It is a very clear case of the minister playing politics with the FOI process. There can be no other plausible explanation for the minister's very different handling of these two FOI applications.

Another matter I would like to draw to members' attention is what I found very interesting through a range of FOI applications that I lodged on the Busselton Hospital and the Busselton jetty refurbishment and foreshore redevelopment. I issued these FOI applications in February 2009 to the Treasurer, a number of other government ministers and government agencies. Of particular interest is that the FOI applications to the Treasurer identified a number of emails to and from Sara Ronald in the Treasurer's office. I think members will know that Sara Ronald used to be employed by the member for Vasse as his electorate officer and that when he was appointed Treasurer, she moved from his electorate office and became a policy officer within his ministerial office. What I found very interesting from those FOI applications was that they identified a number of emails in which Sara Ronald was clearly dealing with electorate issues yet working from a ministerial office. Having been a former ministerial staffer myself, I know that people cannot do that; people cannot use government funding to pay a person to be on ministerial staff and have that person doing electorate work. It is not permitted and it is an abuse of the process.

What was also very interesting is that in the FOI requests I made to other ministers and other agencies, I identified a vast number of additional emails either to or from Sara Ronald that were not disclosed by the Treasurer when he responded to my FOI applications. Those documents had been hidden or omitted by the Treasurer in response to those FOI applications, yet were provided by other ministerial offices or government agencies, which indicated a very high hands-on contact by Sara Ronald on these clearly electorate issues. I decided to give her the benefit of the doubt and asked a parliamentary question on what her duties were as a ministerial policy officer in the Treasurer's office. The response from the Treasurer's office was very cute and generic. It stated that she was a policy officer dealing with policy issues in relation to the portfolio in accordance with the standard policy officer position. It told me nothing. I had to ask another parliamentary question to get a copy of Sara Ronald's position data form to find out exactly what her duties were. This was a very generic PDF

and provided very little detail about what policy areas she was working on or the nature of the job at all, other than general policy. I found that very interesting.

Having made those inquiries, all subsequent FOI applications produced no emails to or from Sara Ronald. I was very interested to hear from Hon Ljiljana Ravlich that she has encountered the same problem. All of a sudden, when people put in an FOI application to a minister's office, they are not getting any or very many emails from or to ministerial staff. Perhaps ministerial officers are no longer using emails as a form of communication. Having worked in a minister's office, I find that very hard to believe, because I understand the nature of the job and the urgency with which people are required to respond. Either this government has made a policy decision that it is going to withhold ministerial staff emails from the FOI process or ministerial staff are no longer using their emails to communicate with members of the public and each other. I do not know what the answer is, but I would be very interested to hear from the Premier what the position is, because it can be only one or the other. In response to earlier FOI applications, we got copies of emails from ministerial staff. We are not getting them now, so something has changed. I would very much like to know what that is.

I also think that the Premier needs to explain to the community whether, under his government, ministerial staff are permitted to do electorate work. If they are, I think that members of the community would be very interested in knowing that, because ministerial staff should not be doing electorate work. It is important when it is very clearly electorate work that bears no relation to the responsibility of that particular minister.

Several members interjected.

The PRESIDENT: Order! One person at a time, please.

Hon ADELE FARINA: Members are already aware of my experience with the office of the Minister for Regional Development from which I sought documents on the Busselton jetty and was told that there were no documents in the office and that my FOI application had been transferred to the South West Development Commission. I then asked a question in Parliament, which resulted in the production of a document that was clearly signed by the minister. I then asked the question, "How is it that you have produced this document that is clearly signed by the minister, yet as a result of my FOI application you told me that you didn't have any documents in your office about this matter?" I also said in that letter to the minister, "Look, I wasn't born yesterday. I know how ministerial offices work. I understand the TRIM system. There is no way that you cannot have documents in your office relating to this matter, and there is no way that there can't be emails in your office generated either from or to your staff on this issue." Of course, the situation was that, yes, there were documents held by that minister's office, and emails. In fact, 46 documents were later identified by the minister. However, it took an FOI application and a number of parliamentary questions to get to the bottom of that. However, that minister's disregard for the FOI process was eventually revealed.

The bottom line is that I do not understand whether there is a complete disregard by ministers of this government of the FOI process and of the right of citizens to access information from this government, and a complete disregard of its ministers' commitment to the community to be open and accountable, or whether it is just incompetence and they just do not understand the act. If that is the case, I am sure that the Information Commissioner would be happy to run some classes for ministers and their staff to acquaint them with the act and their requirements and obligations under it. It is also the case that some serious answers need to be provided to this house and to the public about why, all of a sudden, no emails by ministerial staff are being produced in respect of FOI applications. It is a very, very extraordinary thing that suddenly they dry up.

I am running out of time, so I need to round this up. On the issue of the FOI review, I was very interested to learn from the Leader of the House that the government has in fact instigated a review of the FOI process. On learning this, I immediately did a search for any media statements released by the FOI commissioner or by the government announcing this review, and found none. I find it extraordinary that a review had been instigated and was underway, yet I could not access any information on it at all. Eventually, I found it on the website, thanks to the Leader of the House indicating that that is where I should look. However, there were no media releases. I did not see any advertisements. That is not to say that there might not have been ads, but I certainly did not see them. Mr President, can I have an extension of time?

The PRESIDENT: The member has three minutes yet.

Hon ADELE FARINA: Okay, but I might need more than that. Anyway, I will continue until I get closer to three minutes. I am sorry; I have lost my train of thought.

Hon Norman Moore: What a good thing that is.

The PRESIDENT: Order!

Hon ADELE FARINA: I was talking about the review. Clearly, the government has instigated its review. It is extraordinary that this government does not bother to inform the community that it is undertaking a review of the

FOI act. The only way that I found out was by the Leader of the House announcing it here in Parliament, and I could tell from the look of most members of the government that they also were not aware that the review was underway. I understand that the FOI commissioner has written to the Leader of the Opposition, informing the Leader of the Opposition of the review, but he has not bothered to write to members of Parliament to inform them that the review is underway. The only way of finding out about it is by accessing the website. I find that extraordinary. I think that if the government is serious about conducting a review, it should be standing on hilltops saying, "Hey, we've got a review. We really want your input. Come and talk to us."

I am also concerned that the scope of the review is narrower than I would have liked. The review does not include any consideration of legislative changes. I think that there is a need for some legislative change of the FOI act, and I am concerned that the FOI review does not extend to that. I am also concerned that the FOI review is being conducted by the office of the FOI commissioner and overseen by the FOI commissioner. I would have thought that an independent review would be appropriate, but it is not something that this government sought to do. I will be very interested to know how many submissions are received as part of this review. However, given that the Leader of the House has clearly indicated that a review is underway and I have established that that is the case, I believe it is important that we make a small amendment to the motion before us.

Amendment to Motion

Hon ADELE FARINA: I move —

To delete the words —

review the manner in which departments are administering the freedom of information (FOI) process,

I do not intend to talk to this further. It is clear that part of the motion is condemning the government for not having undertaken that review. It is clear that that review is now underway, so it is reasonable to remove those words from the motion. Therefore, I move an amendment to delete the words —

review the manner in which departments are administering the freedom of information (FOI) process,

I will conclude by saying that there are very real problems with the way the government, and in particular some ministers, is administering the FOI act. The FOI commissioner's annual report of 2008–09 highlights this problem, as does the contribution of ministers to the debate on this motion. Ministers and ministerial officers are not above the law. They should not only faithfully administer the law, but also honour the spirit and the objectives of the FOI act, and that is something that this government is falling very short on.

The PRESIDENT: Order! Could I have a copy of that amendment, please? The piece of paper that I have in front of me does not equate fully with what I thought I heard the member say about the removal of certain words.

Hon ADELE FARINA: I read from that piece of paper, so I would be very concerned if it does not equate with what the President heard me say.

The PRESIDENT: Was the member seeking to remove certain words and then insert these words?

Hon ADELE FARINA: No, to delete those words that are in the motion. If the President looks at the notice paper, commencing with line 2, I have moved to delete the words —

review the manner in which departments are administering the freedom of information (FOI) process,

If the amendment is accepted, the motion would read —

That this house condemns the Premier for failing to honour his election commitment to ensure that the government is accountable and open in accordance with the spirit of the Freedom of Information Act and calls on the Premier to explain why he has allowed a culture of arrogance, secrecy and of deliberately keeping information from the public to develop among his cabinet ministers when dealing with FOI requests.

The PRESIDENT: There will be a Clerk's amendment to remove another "to" also, I think.

Amendment put and passed.

Motion, as Amended

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [3.29 pm]: I will start by thanking Hon Simon O'Brien for reminding us of the high point of Hon Ljiljana Ravlich's submission.

Hon Ljiljana Ravlich: There were many.

Hon MICHAEL MISCHIN: This is one of the high points. She was very fond of using fishing analogies and fish analogies, and there was talk about fishing expeditions and the like. This is not so much a fishing expedition

as when one throws a line in the water. What these Freedom of Information Act applications have in common is that they are more like trawling expeditions, but they come up with nothing.

Hon Robyn McSweeney: We reeled her in!

Hon MICHAEL MISCHIN: In this particular example, she basically picked a couple of months at random and demanded everything that fell within those couple of months, then graciously agreed to narrow it to a two-week period, which she again picked at random. That gives some idea of the quality of the member's inquiry. It also gives us some aperture into the mind of Hon Ljiljana Ravlich when she is trying to extract information that she claims is in the public interest.

She agreed to a random two-week period, but on finding out that there was actually nothing there, she expected the Information Commissioner and the minister to do her job for her and pick another two-week period in which she might actually find something. She does not know quite what she is looking for, but there may be something in there. It is like the expectation of someone who goes out trawling for fish, picks the wrong spot, and then expects the fish to come to him. Frankly, it is more of an indication of the quality of the inquiry and the motivations behind these applications and this particular motion, which I will come to in due course.

Hon Adele Farina raised the subject of exemptions and the like under the Freedom of Information Act and of objective or subjective tests, about which we had a great debate. It is an idle debate, with respect to both of the speakers on that. The fact remains that questions such as what may be in the public interest and whether a particular document falls within a certain category may be the subject of debate. That is what lawyers do all the time on questions of relevance in court. To expect clerical officers, albeit experienced officers with different levels of experience, to know the answer and to be consistent in their responses is simply fanciful. There will always be differences of opinion, which is why there are appeals to the Information Commissioner who can make these decisions, and why other appeal processes are available.

The motion before us is notable for the lack of substance supporting it. I turn to the second-last line, which reveals the paucity of evidence. The motion calls for —

... the Premier to explain why he has allowed a culture of arrogance, secrecy and of deliberately keeping information from the public ...

I will leave aside the question of whether any of it is deliberate, but there has been no reference made during any of the debate—not the slightest bit of evidence—to any member of the public, as opposed to members of Parliament, being inconvenienced or complaining about the way the act is being operated under this government. In fact, the statistical evidence is to the contrary. It may very well be the case that the number of complaints from members of the opposition have increased by 2 000 per cent, but media complaints have decreased by some 50 per cent.

Hon Adele Farina: They have given up! They know they're not going to get an answer!

Hon MICHAEL MISCHIN: Is that the reason? The member knows this for a fact, does she? She is not just guessing; she can produce some evidence! Can she produce some evidence of this, rather than an assertion? Just because Hon Adele Farina says so, it does not make it so, and the same applies to Hon Ljiljana Ravlich or Hon Ljiljana or “whatever”, as I think she referred to herself.

Hon Ljiljana Ravlich: You've got to point in the right direction! You're confused!

Hon MICHAEL MISCHIN: No, I am not confused!

Complaints from the public have decreased by seven per cent. The media and the public do not seem to have a problem with any of this; the only people who seem to have a problem with the process are members of the opposition.

Hon Peter Collier: Some members of the opposition.

Hon MICHAEL MISCHIN: Some members of the opposition; I will give credit where it is due.

The public is not complaining. We can read what the purpose of this act is. There has been a lot of large talk about how the spirit of the act is not being obeyed and how it is being abused. The long title of the act states —

An Act to provide for public access to documents, and to enable the public to ensure that personal information in documents is accurate —

That was the primary purpose of the act. It was so that people could see what the bureaucracy had said about them and put in its files and fix it.

Hon Adele Farina: Are you suggesting that members of Parliament are not members of the public?

Hon MICHAEL MISCHIN: The long title continues —

complete, up to date and not misleading, and for related purposes.

Then we can look at the objectives of the act, where we find that, again, the emphasis is on the public and accountability to the public. We could stretch the point and say that the media are the public in that they represent the public inasmuch as they are an avenue—a conduit—of information about government, and quite rightly so. But to say that any individual is necessarily the public is just idle. I will refer to the first reading debate of the 1991 legislation. Hon Norman Moore has already explained the sorry history of this legislation under the control of the Labor government.

Hon Adele Farina: You can't deal with the issue in front of you; you try to throw some mud to see if it will stick!

Hon Norman Moore: You've been throwing it all afternoon.

Hon MICHAEL MISCHIN: Remember that ornament of open government, the Burke administration, that ornament of respect for Parliament, the Burke administration.

Hon Adele Farina interjected.

Hon MICHAEL MISCHIN: In 1991, the then Minister for Justice introduced a version of the legislation.

The PRESIDENT: Order! Order, members!

Hon MICHAEL MISCHIN: I quote from page 7170 of the *Hansard* of 28 November 1991, which states —

To further the objects of the legislation, the Bill sets out a number of principles aimed at facilitating and encouraging the disclosure of information.

I suggest Hon Adele Farina listen; she might learn something!

Hon Ljiljanna Ravlich: Don't be condescending!

Hon MICHAEL MISCHIN: *Hansard* continues —

As it is, Government already makes available to the public a wide variety of information by both formal and informal means.

And that remains the case.

Hon Adele Farina: Not any more it doesn't!

Hon MICHAEL MISCHIN: *Hansard* continues —

This Bill is not intended to replace existing practices for giving information or to discourage their use; it is intended as a means of exercising rights where access is not available as a matter of custom or law. Therefore, clause 6 recognises that a right of access is not needed in relation to documents which are already available to the public.

One of those means of access available by custom or law is Parliament. Members of the public do not get to insist on the provision of information by members of the government; however, Parliament is the means by which parliamentarians—if they know their job—can try to extract information from the government. It is not done by descending into misusing something such as the Freedom of Information Act.

Hon Adele Farina interjected.

Hon MICHAEL MISCHIN: In terms of misuse, the sort of silly applications that have been flooding ministerial offices is an indication of what is really going in the mind of the opposition. What is really happening? Look at the sort of information that is being sought by way of the FOI requests that ministers and their officers—their public servants—have had to deal with. If anything, the Greens (WA) ought to be complaining about this sort of thing because it must increase the state's carbon footprint tenfold to produce copies of documents of little, if any, relevance, not to mention the energy that is being used. There are requests for access to all diary entries, requests for access to all daily itineraries.

Hon Adele Farina interjected.

The PRESIDENT: Order! Hon Adele Farina, you have had your say; it is somebody else's turn now.

Hon Ljiljanna Ravlich: That's unfortunate!

Hon MICHAEL MISCHIN: I do not know why it is unfortunate; the member has been insisting I have a say for the past two weeks.

Hon Ljiljanna Ravlich: You don't have to get heated up; it was only a passing comment!

Hon MICHAEL MISCHIN: There have been requests for access to all meetings and notes, emails and correspondence. An example of a trawling expedition is a request for all correspondence regarding the Attorney General's involvement in a possible bid for the Commonwealth Games. What is wrong with asking a question about whether he had any involvement in a bid for the Commonwealth Games? Of course, the reality of the request is that it means that he would have to devote part of a full-time equivalent's day to go and answer this question—an FTE from his office who could be usefully employed doing something for the benefit of the public and doing the job of government.

Hon Ljiljana Ravlich requested all documentation between the Premier and any other minister since September 2008. Was there any relevance to it? Even if it had been provided, are there enough resources in the pooled expertise and resources available to the opposition to even read all that stuff? She asked for all documentation on the logo being used on government correspondence since 23 September 2008. There is an issue in the public interest! That is important, hard-hitting stuff! How many FTEs should be employed to deal with that inquiry? Why not ask a question if the member has a question in mind—that is the question that I rhetorically put—instead of trawling through documents that someone else has had to locate, identify, turn their minds to as to whether they fit the description, copy and then provide at great expense to the public? It goes on. We even had one FOI application, which Hon Ljiljana Ravlich mentioned, to see the Attorney General's leave application. If she was that fascinated with his leave application, she could have asked a question with or without notice. She did not. Why did she not? Was there a good reason for it? Members may recall that at one stage—I am quoting from page 982 of *Hansard* of 24 March this year—she claimed —

Those applications were part of a series of freedom of information applications that I had made because I wanted to know what the government was doing about some of the promises that it had cobbled together very quickly prior to the last election. It seemed to me to be a very fair thing.

I interjected —

Why not ask a question?

The answer —

Because I wanted to put in a freedom of information application. If I had wanted to ask a question, I would have asked a question. I will use everything that is available.

The member cannot be bothered to use the avenue of Parliament that she is being paid to use and represent the public in. No, she had to go and put in a raft of what the American lawyers would call boilerplate applications for a vast number of documents of little or no obvious relevance in order to go on a trawling expedition in case something might be there. I wonder whether she would care to share with us how many of the documents that she has been provided with so far she has personally read. I would suggest very few at all.

Hon Ljiljana Ravlich: You're wrong. You're always wrong.

Hon MICHAEL MISCHIN: We will talk about being wrong in a moment.

Hon Ljiljana Ravlich: Why ask for documents and not bother to look at them? That would be a silly thing.

Hon MICHAEL MISCHIN: It certainly would be.

We have heard no evidence so far of any member of the public, as opposed to a member of Parliament, complaining about the way the act has been administered by this government. Not one instance has been mentioned, in what seemed to be some 12 hours of submissions from Hon Ljiljana Ravlich, of a complaint by a single member of the public. Not a single voter outside this chamber seems to have complained. On the contrary, complaints from the public have decreased. The chances of those complaints being dealt with would seem to be fairly low given that the system has been clogged up with a marked increase in complaints and applications from members of the opposition. Here is the latest from the member for Girrawheen. I understand that it has been forwarded to most, if not all, ministers. Her FOI application states —

In accordance with the Western Australian *Freedom of Information Act 1992* I wish to apply for the following documents:

All correspondence,

Not just some or focused on any particular issue —

emails, briefing papers, minutes, statistics, records of meetings and notes of phone conversations from or between Liberal Party state office and your office, from or between Liberal Party Federal office and your office or from or between the following Liberal Party candidates for Federal Parliament, Donna Gordin, Matt Taylor, Joe Ferrante, Ken Wyatt, Mal

Washer, Wilson Tuckey, Luke Simpkins, Don Randall, Judi Moylan, Nola Marino, Michael Keenan, Dennis Jensen, Steve Irons, Barry Haase, Julie Bishop, and your office.

All instructions, letters, emails, directives, records of meetings, statistics, notes of phone conversations, minutes and requests for information to your agencies relating to the abovementioned contact between Liberal Party state office, or Liberal Party federal office or persons who are Liberal Party candidates for Federal parliament (as listed above).

All material furnished by your offices to Liberal party State office or Liberal party Federal office or to persons who are Liberal Party candidates for Federal parliament (as listed above).

The time frame for this request is from 30 June 2009 to 31 March 2010.

...

Please find *enclosed* the application fee of \$30.00.

Notably, I would suggest that the act is not there for the Labor Party to run its federal campaign for re-election. The Freedom of Information Act was not designed —

Several members interjected.

The PRESIDENT: Order! Members have been discussing this for quite a while and they still have particular points of view that they want to express, but there is only one way they can express them in a debate and that is on their feet one at a time.

Hon MICHAEL MISCHIN: I initially thought that this was some kind of a joke, bearing in mind that the letter seems to be dated April Fool's Day 2010, 1 April. Then I realised that my expectations of the opposition were correct and it was serious. It was not just a joke after all and it really does think that the Freedom of Information Act has been designed for it to run its federal re-election campaign rather than to benefit members of the public. How many officers of the public service will have to be devoted to this expedition? So far Hon Ljiljana Ravlich reckons that the Information Commissioner needs a further two full-time equivalents—a further two public servants. This is a time of financial stringency when we are required to reduce spending because of the after-effects of the global financial crisis. We have had an awful lot of stick over the past few weeks about how we are not controlling spending in the public sector and resources are limited, although it appears that Hon Ken Travers still thinks that we ought to invest in stadia, one of which is to try to get a bid for a soccer game in 2018.

There are complaints about services being cut to government. People who are members of unions the opposition represent are seeking pay increases that the government can ill-afford. Contributions and grants to community organisations have had to be slimmed down. We have a campaign complaining that libraries ought to have more spent on them. I am sure it will come as a great comfort to members of the public to know that because of these sorts of witless applications, we ought to be hiring another two full-time public servants to deal with the 2 000 per cent increase in applications and complaints from members of the opposition. Why limit it to two? Why not set up a department? We will call it the "ALP Freedom of Information Act Department". Perhaps we ought to put up a little plaque for each service that has closed down, saying that funds have been redirected from this particular public service or benefit to supply further resources to the Information Commissioner so that he can deal with requests from the ALP opposition. Any inquiries should be referred to Hon Ljiljana Ravlich. That is the level of these applications. We do not have to go far to know what is going on.

What this is all about, of course, is impeding the machinery of government and work on things that really matter by flooding government with applications. One can see the sort of heady debates that went on in the caucus room about tactics over the past couple of years after the usual mourning about how the Labor Party lost government. All the members retired to some smoke-filled room where they usually do their deals and decided on the one thing they could do. They could send out a whole pile of FOI applications. They would make them as stupid and unreasonable as they could because then the government would be between a rock and a hard place. "If ministers supply all this stuff and treat it seriously, which they'd be crazy to do because that would just be a waste of public resources and an irresponsible use of government time, money, energy and people, if they do all this then they're going to have to increase their own departmental resources to do the work of government and they won't do that anyway because, of course, some of our requests are going to be unreasonable, they'll need to be trimmed down, so they won't do that," members opposite think to themselves. The benefit is that if their requests are refused, members opposite can clog up the system and complain that the government is not working within the spirit of the act, so members opposite think it is a win-win situation.

The opposition can complain about the government not doing its job when in reality it displays an arrogance and an abuse of public resources and legislation that is designed to assist members of the public, the ordinary Joes and Josephines out on the street, the ordinary people who want to access their records and legitimately find out

what government is doing on a community issue. An avenue that is not available to those people is to come along and ask questions in Parliament. They do not do that and they cannot do that. Instead, members of the opposition eschew the privilege and the power that they have as members of this Parliament and choose to indulge in this sort of pathetic effort. None of these applications is in the public interest. None of the public seem to have been interested in this debate, not that that is what public interest is about; the public interest is the public benefit, and we have seen none of that and no concrete evidence that anything that has been found was worthwhile.

Hon Ljiljana Ravlich, I think in the context of suggesting that examples are set from the top, used the charming analogy that a fish rots from the head.

Hon Ljiljana Ravlich: It is an old Russian saying.

Hon MICHAEL MISCHIN: There we go, English not being her first language and all!

A fish rots from the head, well, only when it is dead. I can say with confidence that the fish on this side of the chamber are alive, well, fit and swimming hard. We are doing far better than the bottom feeders on the other side of the chamber; those who abuse a public process. We are doing far better than the bottom feeders, one might say lobsters—we all know the jokes about what the heads of lobsters are full of.

This motion has no merit at all. Of all the applications that Hon Ljiljana Ravlich has lodged with the Department of the Premier and Cabinet, none has succeeded on appeal. The member complained that of some five applications to the Attorney General, three had missed the deadline. She claimed that was a 40 per cent strike rate, whatever that means. I think it is a 40 per cent success rate in getting them done and in on time and a 60 per cent failure rate. If that is the member's idea of a measure of success, that is for her; however, she said that in most classrooms that would be considered a failure rate. Judging from the success of the member's applications upon appeal to the Information Commissioner, she has had a success rate of zero, as I understand it. Of course, under the old outcomes-based education system, that would have been a pass as well. This motion is without merit and no evidence has been put forward to support it on its own terms. Frankly, it ought to be treated with the contempt that it deserves.

HON LJILJANNA RAVLICH (East Metropolitan) [3.54 pm] — in reply: I must say that I am simply amazed at what I heard in this chamber. I would not expect the government to basically do anything different. However, I would be a little surprised if members on the government side did not feel a bit guilty about the way in which they, particularly ministers and their offices, have responded to the legal requirements of the Freedom of Information Act.

I know that in my reply I do not have the opportunity to introduce any new material, but it is a good opportunity for me to provide a summary of some of the main points of this debate. This has been a very good debate. Whether members on the opposite side feel comfortable about having this debate is another matter. If I were on the other side, I certainly would not be comfortable about this debate because I think in their heart of hearts members opposite really understand that they have not dealt with the legal requirements of this act as they should have.

The matter is made even worse because time and again the now Premier trotted out the now Minister for Education and she, as the shadow minister for accountability back then, made a big song and dance about how bad the previous government was in relation to government accountability, transparency, openness and so on and so forth. Obviously, there may have been some issues in respect of the public. Certainly, when we went to the last election, which we lost and that is why we find ourselves on this side of the chamber, people had a view that perhaps when the now Premier took up office and formed his cabinet et cetera that he would be true to the commitment he gave to Western Australians prior to the election that his government would be more open, accountable and transparent. It became apparent very early on that this would not be forthcoming. The people who were the strongest advocates in opposition for transparency, openness and accountability are the people we never see. They are the people who are least cooperative and who seem to have the most to hide. I have said time and again in this place, and Hon Adele Farina concurred, that this is a pattern experienced by all shadow ministers in their freedom of information applications. Time and again each and every one of them report the same criticisms about the way that ministers deal with the FOI act; it is about returning their cheques, it is about —

Hon Adele Farina: What returned cheque? You never get one back. You send it and they don't return the cheque.

Hon LJILJANNA RAVLICH: They refuse the application, certainly I have time —

Hon Adele Farina: They quote you for 60 reports and you get 40, but you get no refund!

Hon LJILJANNA RAVLICH: Time and again, applications are late, applications are not accepted, cheques are returned, or, in the event that we get past that process, we are told that there are 1 000 documents but in fact when we receive the bundle there are only 12 or 10 or five documents or whatever it is. We can no longer have the Premier and his ministers routinely resist, delay and deny applications by withholding information claiming that documents do not exist when in fact they do, refusing to accept applications by returning cheques, and refusing to acknowledge receipt of applications. That is not acceptable. Freedom of information access rights are enshrined by law and the Barnett government, having been elected on a platform of transparency and accountability, now has to step up to the plate and honour the commitment it gave to Western Australians prior to the last election. I do not think it is good enough for the Premier not to lead by example. I certainly do not believe for one minute that the Attorney General, as the state's number one law man, sets a good example for all ministers, all agencies and all ministerial offices to follow. I have to say that one of the most concerning things about this matter is that the Attorney General seems to be one of the worst offenders. I think it sends a very bad signal right from the top. That is why I have repeatedly, in making my remarks to this place, used the analogy about fish rotting from the head. We want the Premier to be open, we want the Premier to be accountable and we want to make sure that he makes sure that his ministers are also accountable.

I have to say that one of the most telling indicators of the disregard that this government has for the Freedom of Information Act and its application was when the Information Commissioner came before the Standing Committee on Estimates and Financial Operations and said that he would require only two full-time equivalent employees to clear the backlog of applications. This Premier and this Treasurer did nothing to assist the FOI commissioner to do that. One can only conclude that they must in their own minds regard the backlog in the number of FOI applications and the way in which they are being dealt with as not a problem for government. That is the only conclusion one can make, because quite clearly if the government could get rid of the problem for less than \$100 000, why would it not do that? Only last week I finally received the documents for an application I lodged 13 months ago. I call on the Premier and I call on the Treasurer to make sure that those two FTEs are provided to the Office of the Information Commissioner so that it can get on with the job that it has been set.

I make no secret of the fact that I have some very serious grievances about the whole FOI process. One of my key concerns is that we may well miss the opportunity for the level of scrutiny of ministers' offices as a part of the review. I have put forward a submission on that matter to the freedom of information review. In that submission I make it very clear that I am concerned that this review may well not direct its inquiry to those areas where it is most needed, but rather will focus on government agencies. I have made the point that government agencies in my view do their job pretty well. Certainly, as shadow minister for accountability —

Hon Norman Moore: That's an absolute contradiction in terms!

Hon LJILJANNA RAVLICH: It does not matter; I am not here to satisfy Hon Norman Moore!

Hon Norman Moore: I'm glad about that!

Several members interjected.

Hon LJILJANNA RAVLICH: Hon Michael Mischin said time and again that this is an act for the public. By implication he is saying that this is an act that is not for members of Parliament. Hon Michael Mischin does not seem to understand that for all he knows I may well have made some of my FOI applications on behalf of members of the public.

Hon Michael Mischin: Did you?

Hon LJILJANNA RAVLICH: Whether I did or I did not is not something I need to explain.

Hon Michael Mischin: The answer's no.

Hon LJILJANNA RAVLICH: I do not need to tell Hon Michael Mischin. The point is that I might well have put in a submission on behalf of members of the public. When members on this side of the house and on this side of the political wing make applications, they may make them for whatever reason. One of those reasons may well be because it is on behalf of members of the public. If they choose to do that, well and good and so on and so forth. The argument of Hon Michael Mischin that members of Parliament are not members of the public as such and that the application, on his interpretation, therefore does not comply with the act in some way is a pretty hopeless argument.

Hon Michael Mischin: I didn't say it didn't comply with the act.

Hon LJILJANNA RAVLICH: All right, but Hon Michael Mischin is saying that we are not members of the public and therefore we should not be putting in applications.

Although members opposite may not agree, I have endeavoured to provide practical examples of freedom of information applications, albeit I took a fairly narrow focus in presenting the house with examples. One example was of one FOI application that was sent to all ministers and how eight ministers in particular dealt with that response. I could have given an example of how all ministers dealt with that application, and members would have had even more variants of the way each and every one of them and their offices responded to the application. Although Hon Simon O'Brien may not agree, an application for one document ending up with seven different responses from eight ministers means to me that this act is clearly not operating as it should be. The reasons that the act is not operating as it should be are that there is no goodwill on behalf of ministers or their staff are not properly trained; that the government has gone into shutdown mode and has decided that it does not want to be open and accountable; and that those ministers have decided that they are in government and they have some divine right to rule. Those are the only reasons we can conclude from what we have seen from this government to this point. I hope in my heart of hearts that there is some improvement to the Freedom of Information Act. If not, it is likely to get very ugly as, quite frankly, the government will have only one way to go. It will choose to basically clamp down even further and will move to introduce aspects to the act that will further reduce the right to access. That will then bring into question our democratic rights, our democratic principles, the Westminster system, the role of Parliament and the role of members of Parliament in seeking and having access to information. That will be very sad and will challenge democracy as we know it.

Hon Norman Moore: Ha, ha!

Hon LJILJANNA RAVLICH: Yes, I do think that is true. Hon Norman Moore should not be laughing. He knows it is true. He thinks it is a joke. I do not for a moment think it is a joke. I think it is very serious. Informed people having access to information leads to a better democratic outcome. If Hon Norman Moore thinks that is not true, he should not be in this place representing the people of this state; he should be way outside.

Mr President, I thank the house for its indulgence in this matter.

Motion, as amended, put and a division taken with the following result —

Ayes (12)

Hon Helen Bullock
Hon Robin Chapple
Hon Kate Doust

Hon Sue Ellery
Hon Adele Farina
Hon Lynn MacLaren

Hon Ljiljana Ravlich
Hon Linda Savage
Hon Sally Talbot

Hon Ken Travers
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Wendy Duncan

Hon Phil Edman
Hon Donna Faragher
Hon Philip Gardiner
Hon Alyssa Hayden
Hon Col Holt

Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien

Hon Max Trenorden
Hon Ken Baston (*Teller*)

Pairs

Hon Jon Ford
Hon Matt Benson-Lidholm
Hon Giz Watson

Hon Nigel Hallett
Hon Brian Ellis
Hon Nick Goiran

Motion, as amended, thus negatived.

The PRESIDENT: Before members resume their seats, it seems that everybody found their way here very well. Members will notice, this being the first division in the newly refurbished chamber, the timer is up on the screen rather than by the hourglass. As I said, all members found their way pretty well so it seemed to work. Would members please resume their seats.

Noting the time and noting that we normally take our break in a couple of minutes, as it is that close I will leave the chair until the ringing of the bells.

Sitting suspended from 4.12 to 4.30 pm