

Oversight of the Office of the Information Commissioner

Report No. 7

Legal Affairs and Community Safety Committee

August 2012

Legal Affairs and Community Safety Committee

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Acknowledgements

The Committee acknowledges the assistance provided by the Information Commissioner and her staff.

Contents

Abbreviations **iv**

Chair’s foreword **v**

Recommendations **vii**

1 Introduction **1**

1.1 Role of the Committee 1

1.2 Purpose and functions of the Office of the Information Commissioner 1

1.3 Committee’s responsibilities regarding the Office of the Information Commissioner 2

Statutory office holders and the role of the Committee 2

Strategic Review of the Office of the Information Commissioner 3

1.4 Other reviews 3

2 Oversight of the Information Commissioner **4**

2.1 Process followed by the Committee 4

3 Committee comments **4**

3.1 Performance 4

3.2 Public Awareness Report 5

3.3 Public Sector Attitudes Report 6

3.4 Knowledge management 6

3.5 Training 6

3.6 Unreasonable and vexatious applicants 7

3.7 Financial management 8

Appendix A - Written Responses to Questions on Notice **9**

Appendix B - Transcript of Meeting with the Office of the Information Commissioner **34**

Abbreviations

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|-----------|---|
| Committee | Legal Affairs and Community Safety Committee |
| IP Act | Information Privacy Act 2009 |
| LAPCSESC | Legal Affairs, Police, Corrective Services and Emergency Services Committee |
| OIC | Office of the Information Commissioner |
| RTI Act | Right to Information Act 2009 |

Chair's foreword

The Legal Affairs and Community Safety Committee (the Committee) has oversight responsibility for the Office of the Information Commissioner. This report provides information regarding the performance of the Office of the Information Commissioner and its functions under the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

The Committee met with the Information Commissioner, Ms Julie Kinross, and her staff on 20 June 2012. The Committee also reviewed the Office of the Information Commissioner's Annual Report for 2010-2011 which was tabled in the Legislative Assembly on 30 September 2011.

On behalf of the Committee, I thank the Information Commissioner and her staff who assisted the Committee throughout the course of this inquiry.

I commend this Report to the House.



Mr Ray Hopper MP

Chair

Recommendations

Recommendation 1

8

The *Right to Information Act 2009* be amended to allow the publication of the name of a person declared by the Information Commissioner to be a vexatious applicant.

Recommendation 2

8

The House note this Report.

1 Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (the Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Department of Police; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Committee also has oversight responsibilities for the Office of the Information Commissioner, the Queensland Ombudsman, the Electoral Commissioner and the Criminal Organisation Public Interest Monitor.

This report is made in relation to the Committee's statutory oversight responsibility of the Office of the Information Commissioner (OIC).

1.2 Purpose and functions of the Office of the Information Commissioner

The OIC is an independent statutory body established under the Right to Information Act 2009 (RTI Act) and the Information Privacy Act 2009 (IP Act) 'to promote access to government-held information, and to protect people's personal information held by the public sector.'² The RTI Act and IP Act were enacted following an independent review of freedom of information laws in Queensland (the 2009 Reforms).³

Further information about the role of the OIC is set out on its website:

The OIC provides information and assistance to support Queensland public sector agencies to comply with the law, reviews agency decisions regarding access and amendment applications, deals with privacy complaints and makes decisions on whether an agency's privacy obligations can be waived or modified in the public interest. Also, OIC promotes the principles and practices of Right to Information and Information Privacy throughout the community. The right to information legislation is about improving access to public sector information so that the community is better informed.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² Office of the Information Commissioner, downloaded 23 July 2012 from website at www.oic.qld.gov.au/about-us/media-centre.

³ D Solomon AM, *The Right to Information: Reviewing Queensland's Freedom of Information Act 1992*, June 2008. These Acts replaced the repealed the *Freedom of Information Act 1992* and Information Standards 42 and 42A.

The Office of the Information Commissioner (OIC) aims to lead the improvement of public sector right to information and privacy administration in Queensland by promoting an understanding of, and compliance with right to information and privacy principles.⁴

1.3 Committee's responsibilities regarding the Office of the Information Commissioner

The Committee's oversight role of the OIC is set out in the RTI Act and the IP Act. Under those Acts, the Committee's functions include:

- to monitor and review the performance by the Information Commissioner of the Commissioner's functions under the RTI Act and IP Act;
- to report to the Legislative Assembly on any matter concerning the Information Commissioner, her functions or the performance of her functions that the Committee considers should be drawn to the Legislative Assembly's attention;
- to examine each annual report tabled in the Legislative Assembly by the Information Commissioner under the RTI Act and the IP Act and, if appropriate, to comment on any aspect of the report and to make recommendations;
- to report to the Legislative Assembly any changes to the functions, structures and procedures of the OIC the Committee considers desirable for the more effective operation of the RTI Act and the IP Act; and
- any other functions conferred on the Committee by the RTI Act and IP Act.⁵

Statutory office holders and the role of the Committee

The Committee must be consulted on the selection process for appointment, and the appointment of, a person as Information Commissioner, Right to Information Commissioner, or Privacy Commissioner.⁶

The current Information Commissioner is Ms Julie Kinross. Ms Kinross was appointed as Information Commissioner under the RTI Act on 10 August 2009 and her term is due to expire later this year.⁷ The role has been advertised and in line with previous practice, the Committee expects to be involved in the selection process in due course.

In its Questions on Notice, the Committee noted the inaugural Privacy Commissioner, Ms Linda Matthews, resigned for family reasons 16 months into her role. Mr Lemm Ex is currently Acting Privacy Commissioner and has been in this role since December 2011.⁸

No other changes to the statutory office holders have occurred since the last oversight report was tabled in the Legislative Assembly.⁹

⁴ Office of the Information Commissioner, downloaded 23 July 2012 from website at www.oic.qld.gov.au/about-us/media-centre.

⁵ *Right to Information Act 2009*, section 189; *Information Privacy Act 2009*, section 195.

⁶ *Right to Information Act 2009*, section 135 (Information Commissioner); section 151 (Right to Information Commissioner); *Information Privacy Act 2009*, section 145 (Privacy Commissioner). Both Acts provide that the Committee is not consulted on the re-appointment of a person as Information Commissioner, Right to Information Commissioner or Privacy Commissioner.

⁷ Letter dated 6 June from the Hon Mr Jarrod Bleijie MP, Attorney-General and Minister for Justice.

⁸ Office of the Information Commissioner, downloaded 17 July 2012 from website at www.oic.qld.gov.au/about-us/our-organisation.

⁹ Law, Justice and Safety Committee, Report No 79, *Meeting with the Information Commissioner*, 18 February 2011, tabled 11 May 2011.

Strategic Review of the Office of the Information Commissioner

A strategic review of the OIC must be conducted within four years of the commencement of the RTI Act, followed by further strategic reviews of at least every five years.¹⁰

A strategic review must include consideration of the Information Commissioner's functions and the performance of those functions to assess whether they are being performed economically, effectively and efficiently.¹¹

The responsible Minister must consult with the Committee on the appointment of the reviewer and the terms of reference.¹² The Governor in Council then appoints a reviewer who must be an appropriately qualified person, and who must provide a report on the review.¹³ The final terms of reference are to be decided by the Governor in Council.¹⁴

Once the review is completed, the Minister must table the strategic review report in the Legislative Assembly and it is then referred to the Committee.¹⁵

The Committee notes that the first strategic review is not due to commence until 2013; the RTI Act did not commence until 1 July 2009.

1.4 Other reviews

The responsible Minister must commence reviews of the RTI Act and IP Act no later than two years after their commencement, and table reports of those reviews in the Legislative Assembly.

The objects of those reviews are to:

- decide whether the primary objects of the RTI Act and IP Act remain valid;
- decide whether the RTI Act and IP Act are meeting their primary objects;
- decide whether the provisions of the RTI Act and IP Act are appropriate for meeting their primary objects; and
- investigate any specific issue recommended by the Minister or information commissioner.¹⁶

The RTI Act and IP Act both substantively commenced on 1 July 2009. The Committee noted the Information Commissioner's response to its Questions on Notice that her office was consulted by the Department of Justice and Attorney-General on draft terms of reference for the review in December 2010. At the same time, the Information Commissioner also advised that she:

... wrote to the Director-General of the Department of Justice and Attorney-General in June 2011 to offer to assist the review by commenting on and providing advice on the scope of any issue, options to address issues and possible unintended consequences of any draft amendments. The Information Commissioner also recommended a number of specific issues be investigated during the course of the review to improve the effectiveness and efficiency of the legislation.¹⁷

The Committee looks forward to providing its comments on these reviews in due course.

¹⁰ *Right to Information Act 2009*, section 186(2) and (3).

¹¹ *Right to Information Act 2009*, section 186(9).

¹² *Right to Information Act 2009*, section 186(7).

¹³ *Right to Information Act 2009*, section 186(5).

¹⁴ *Right to Information Act 2009*, section 186(6).

¹⁵ *Right to Information Act 2009*, section 188(7).

¹⁶ *Right to Information Act 2009*, section 183; *Information Privacy Act 2009*, section 192.

¹⁷ Letter from the Information Commissioner dated 10 February 2012, at pages 22-23.

2 Oversight of the Information Commissioner

2.1 Process followed by the Committee

In conducting its oversight functions of the Information Commissioner, the Committee followed the processes adopted by previous committees.

The process included:

- Questions on Notice being provided to the Information Commissioner with a request for responses to be provided prior to the meeting;
- a public hearing with the Information Commissioner to discuss her responses to the Questions on Notice and to ask questions without notice; and
- providing this Report.

On 14 December 2011, the former Legal Affairs, Police, Corrective Services and Emergency Services Committee (LAPCSESC) provided Questions on Notice to the Information Commissioner.

On 10 February 2012, the LAPCSESC received the Information Commissioner's response to its Questions on Notice. The response is attached at **Appendix A**.

The LAPCSESC ceased to operate when the 53rd Parliament was dissolved on 19 February 2012 and could not continue the oversight process of the Information Commissioner which it had commenced. One of the first orders of business of the Committee after it commenced operation on 18 May 2012, was to continue the oversight process commenced by the former LAPCSESC where it left off.

On Wednesday 20 June 2012, the Committee held a public hearing with the Information Commissioner to discuss the responses to the Questions on Notice provided to the former Committee, the Commissioner's functions and performance under the RTI Act and IP Act and the OIC Annual Report 2010-2011.¹⁸

In attendance with the Information Commissioner were:

- Ms Jenny Mead, Right to Information Commissioner;
- Ms Clare Smith, Right to Information Commissioner;¹⁹ and
- Mr Lemm Ex, Acting Privacy Commissioner.

The transcript of the hearing is attached at **Appendix B**.

3 Committee comments

The Committee acknowledges the continued efforts of the OIC in realising the 2009 Reforms. The Committee is cognisant of the work required to effect the cultural change needed to fully realise these reforms, and accepts that political leadership and agency leadership is critical to its successful implementation.²⁰

3.1 Performance

In relation to the performance of the OIC, the Committee notes:

¹⁸ The meeting was originally scheduled for 14 March 2012 but was cancelled shortly after the former Premier, the Hon Anna Bligh MP, announced her intention to seek dissolution of Parliament.

¹⁹ Ms Mead and Ms Smith share the workload of the Right to Information Commissioner, each on a part time basis. Office of the Information Commissioner, downloaded 24 July 2012 from website at www.oic.qld.gov.au/about-us/our-organisation.

²⁰ Meeting with the Information Commissioner, *Transcript of Proceedings*, 20 June 2012, pages 4-5.

- There were similarly high levels of demand for external review in 2010-2011 compared to the previous year. In 2010-2011, the OIC received 412 external review applications, compared to 439 in 2009-2010.²¹ As at 31 January 2012, the OIC reports that the number of applications on hand is higher than the previous period and that this number is increasing primarily due to the 'ongoing difficulty in meeting the sharp increase in demand and the increase in the proportion of applications that require substantive work.'²²
- A record number of file closures by the OIC. A total of 394 applications were closed by the OIC in 2010-2011. This is the highest number of file closures attained by the OIC since 2006-2007.²³ It was reported that the 'OIC is continuing to close applications at record levels and is on target to achieve the record number closed in 2010-11.'²⁴
- An increase in the number of privacy complaints. The OIC expects to receive more than double the number of complaints this year, with an expectation that this will grow again in 2012-2013.²⁵ The OIC reported 'if the current rate of receipt of privacy complaints continues, the number of privacy complaints will be on a par with those of more established privacy jurisdictions in other states.'²⁶
- The number of open reviews at the end of 2010-2011 older than 12 months was 5. This is one more than the previous year.²⁷

Following on from the theme of cultural change, the Committee noted with interest the results of two reports tabled in the Legislative Assembly by the OIC in August 2011.

3.2 Public Awareness Report

This survey was about Queensland public awareness of the 2009 Reforms and public confidence in government agency decision-making.²⁸ Some of the key findings of the OIC's report *Public Awareness of Right to Information Reforms: Results* were that:

- four in five Queenslanders are aware of freedom of information;
- one in three recognise the new terminology: right to information and information privacy;
- nine out of ten Queenslanders believe they have a right to see all of their personal information held by a public agency on request. Approximately two thirds believe they can see any information on request. However, very few have exercised these rights by formally requesting information;
- consistent with overseas jurisdictions, around half of Queenslanders are confident in the openness of public sector agencies' decision-making and that agency decisions are for the greater public good; and
- confidence in public-sector decision-making varies by age, language and region.²⁹

²¹ Office of the Information Commissioner, *Annual Report 2010-11*, page 59.

²² Answers to Questions on Notice, paragraph 3.1, page 7.

²³ Office of the Information Commissioner, *Annual Report 2010-11*, page 61.

²⁴ Answers to Questions on Notice, paragraph 3.1, page 7.

²⁵ Meeting with the Information Commissioner, *Transcript of Proceedings*, 20 June 2012, page 1.

²⁶ Answers to Questions on Notice, paragraph 9, page 12.

²⁷ Office of the Information Commissioner, *Annual Report 2010-11*, pages 12 and 16.

²⁸ Office of the Information Commissioner, Report No. 4 of 2010/11, *Public Awareness of Right to Information Reforms: Results*, tabled in the Legislative Assembly on 2 August 2011.

²⁹ Answers to Questions on Notice, paragraph 1.1, page 2.

3.3 Public Sector Attitudes Report

This survey was conducted by the OIC to examine the public sector culture of openness by surveying the attitudes of public servants to the 2009 Reforms.³⁰ Some of the key findings of the OIC's report *Public Sector Attitudes to Right to Information: Results* include:

- four in five public servants agreed that right to information and information privacy reforms have had a positive impact on their agency and that their agency has a culture open to the release of information;
- over three quarters agreed that the agency now publishes information as a matter of course and has employed new strategies, particularly new technologies, to make information publicly available;
- public servants believed the reforms had been well implemented, but more work was needed. Senior public servants were more conscious of the implementation effort than front line staff; and
- just over half the public servants acknowledged training had been conducted and was effective, but thought that more training within agencies was needed to explain how the reforms apply to their day to day work.³¹

The Committee is overall encouraged by these results and notes that management of expectations is one of the areas which may require further work given the '*apparent public's expectation of an unfettered right to access public sector information*'.³²

3.4 Knowledge management

The Committee notes the commitment of the OIC over the 2010-2011 reporting period to develop its information and technology in order to improve its services and to better promote right to information and information privacy.

In addition to the increased use of social media, such as Twitter and YouTube, to promote the role of the OIC and disseminate resources, the OIC developed a 'one-stop shop' that '*allows easy access to research resources and OIC's past and current corporate knowledge*'.³³ As part of this knowledge management system, the OIC has also published annotated legislation which the Commissioner believed was '*a first for Queensland tribunals and equivalent type bodies*'.³⁴

The Committee was pleased to see that the project by the OIC, to make much of its electronic management system available on its website (including the annotated legislation) has now been launched.³⁵

The Committee looks forward to understanding the impact this has on the services of the OIC in due course.

3.5 Training

In relation to the service of the OIC to foster improvements in the quality of practice in the right to information and information privacy in Queensland government agencies, the Committee notes the OIC:

³⁰ Office of the Information Commissioner, Report No. 5 of 2010/11, *Public Sector Attitudes to Right to Information: Results*, tabled in the Legislative Assembly on 2 August 2011.

³¹ Answers to Questions on Notice, paragraph 2.1, page 5.

³² Answers to Questions on Notice, paragraph 1.6, page 4.

³³ Office of the Information Commissioner, *Annual Report 2010-11*, pages 8-9.

³⁴ Meeting with the Information Commissioner, *Transcript of Proceedings*, 20 June 2012, page 2.

³⁵ Office of the Information Commissioner, *Annual Report 2010-11*, page 9.

- has delivered on its commitment to provide resolution training to build the skills of decision makers, and which is reported as having '*been universally well received an evaluated as improving skill levels of participants*';³⁶ and
- has developed an online training module on privacy – which is available free of charge to all public sector employees. It was reported that '*in four weeks since the launch, 1,100 people have been trained*'.³⁷

The Committee is pleased with the continued emphasis by the OIC in this service area, and considers its focus on this area will assist it in addressing some of the findings of the reports discussed above.

3.6 Unreasonable and vexatious applicants

The Committee notes with concern the information provided by the OIC regarding unreasonable applicants. During the Committee's meeting, Ms Kinross stated:

*Unreasonable conduct by applicants takes up a disproportionate amount of agency time in managing access applications. We know from our own research that one percent of our applicants are responsible for 20 per cent of the applications we receive. This is confirmed by my interstate colleagues, one of whom is a former Ombudsman.*³⁸

The Committee was also interested to hear that earlier this year the Information Commissioner made its first declaration of a vexatious applicant, but that this also raised an issue regarding the fitness for purpose of the RTI Act:

I made the first declaration of a vexatious applicant in Queensland under a provision in the legislation that is similar to the legislation permitting a Supreme Court justice to declare a legal proceeding vexatious. No person has been declared a vexatious applicant since the commencement of freedom of information in 1992. The person so declared was one of our top 10 flyers. Establishing some precedence around when such a declaration will be made will undoubtedly lead to more applications from agencies and, in time, the impact of removing vexatious applicants across the system will make the whole-of-government system more efficient and improve service delivery to what we might term as more regular applicants.

...

We have suggested to the [Department of Justice and Attorney-General] things that might help us. For example, when we made the first declaration of a vexatious applicant, we realised that we cannot publish the name of the vexatious person because of the way the legislation works. There is a provision in the legislation that authorises us to publish decisions on our website. So decisions get published with people's names, but the same provisions do not apply to declarations of vexatious people. In making that declaration, I consulted with the Privacy Commissioner, who said 'If you publish that person's name you may well have a technical breach of the privacy principles'. As model people, we cannot afford to be accused of that. So we have not published that name. It is ludicrous that we cannot. That is something that we have raised with the department to help us, because if we can publish that name all the agencies that deal with that person will know what restrictions are on that person in terms of making right to information applications.

The Committee supports this position that the OIC should be able to publish the name of a person whom it declares to be a vexatious applicant.

³⁶ Office of the Information Commissioner, *Annual Report 2010-11*, page 25; Meeting with the Information Commissioner, *Transcript of Proceedings*, 20 June 2012, page 2.

³⁷ Meeting with the Information Commissioner, *Transcript of Proceedings*, 20 June 2012, page 3.

³⁸ Meeting with the Information Commissioner, *Transcript of Proceedings*, 20 June 2012, page 2.

In accordance with its oversight functions, the Committee draws this matter to the attention of the Legislative Assembly and supports an amendment to the applicable legislation.

Recommendation 1

The *Right to Information Act 2009* be amended to allow the publication of the name of a person declared by the Information Commissioner to be a vexatious applicant.

3.7 Financial management

The Committee was pleased to hear that the OIC is assisting the government in its objective of cutting government waste.

It is noted that the Information Commissioner and her staff have offered up \$4 million towards the savings effort largely through internal management decisions.³⁹ The Committee commends the OIC for its prudent financial management.

Recommendation 2

The House note this Report.

³⁹ Meeting with the Information Commissioner, *Transcript of Proceedings*, 20 June 2012, page 3.

Appendix A

Written Responses to Questions on Notice



**Office of the Information Commissioner
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10 February 2012

Ms Barbara Stone MP
Chair of the Legal Affairs, Police,
Corrective Services and Emergency
Services Committee
Parliament House
George Street
Brisbane Q4000

Dear Ms Stone

Legal Affairs, Police, Corrective Services and Emergency Services Committee

Please find attached answers to the Questions on Notice from the Committee received on 16 December 2011.

Yours sincerely



Julie Kinross
Information Commissioner

**MEETING WITH THE QUEENSLAND INFORMATION COMMISSIONER
FEBRUARY 2012**

QUESTIONS ON NOTICE

Public awareness of and public sector attitudes to the reforms

1. The OIC's report entitled *Public Awareness of Right to Information Reforms: Results of the general public awareness survey in Queensland (the Public Awareness report)*, tabled in June 2011, captured public awareness of the right to information and privacy reforms, as well as public attitudes to the reforms and to government more generally. The *Public Awareness* report gathered baseline data so that future surveys will be able to assess the change in public awareness and confidence against the baseline results of this report. The results of the *Public Awareness* report will be used to target OIC efforts to promote greater awareness of the RTI and IP Acts in the community, in training, and the development of information resources (page 10 refers).

1.1 What were the key findings of the *Public Awareness* survey?

The key findings of the survey were that:

- four in five Queenslanders are aware of freedom of information
- one in three recognise the new terminology: right to information and information privacy
- nine out of ten Queenslanders believe they have a right to see all of their personal information held by a public agency on request. Approximately two thirds believe they can see any information on request. However, very few have exercised these rights by formally requesting information
- people who apply for information are primarily seeking information about themselves
- consistent with overseas jurisdictions, around half of Queenslanders are confident in the openness of public sector agencies' decision-making and that agency decisions are for the greater public good
- confidence in public sector decision-making varies by age, language and region
- over half the respondents were confident in their ability to engage with public agencies; and,
- 4% of respondents had made formal access applications and of these 66% had primarily sought information about themselves.

1.2 What was the cost of conducting the survey and producing the *Public Awareness* report?

The total project cost for the survey was \$62,956 (GST inclusive).

1.3 Was the OIC satisfied with the design, methodology, conduct and analysis of the survey? Are there any areas where the OIC would make changes in future?

OIC was satisfied with the design, methodology, conduct and analysis of the survey. OIC and OESR have discussed refinement of the survey and methodology as part of continuous improvement. Any changes will be carefully considered to ensure that results of future surveys can be compared against the baseline results provided by this survey. For example, in the survey, OESR contacted private dwellings with a landline

telephone at random. OESR now has a system that allows it to contact households with mobile phones only. The system will improve the sample's representation of the population. This improvement will be considered for future surveys.

1.4 What are the OIC's plans for conducting future awareness surveys?

The results from the first survey provide a benchmark from which trend information can be tracked. Advice from OESR is that movements in population level trend lines may be slow and occur over longer periods of time. OIC intends to repeat the survey in 2012-13 to gauge any movement and will re-assess at that time the intervals at which future surveys may be undertaken.

1.5 Is the OIC funded for future surveys within baseline funding?

OIC receives expense funding for supplies and services to support its statutory functions which include commissioning external research, and consulting experts in the design of surveys, to monitor whether the legislation and its administration are achieving this Act's stated objectives. Activities are prioritised and budgeted for in the annual budget.

1.6 Please outline how the results of the *Public Awareness* report are being, or will be, used to target effort now and in the future?

OIC functions include commissioning external research to monitor whether the legislation is achieving its objectives. The initial survey provides a benchmark from which trend information can be mapped over time. The survey may provide information about whether the legislation is achieving its objectives in a variety of ways. These will be used by any number of stakeholders over time. For example the trend in the proportion of the population that makes formal access applications over time may provide information about whether the legislation is being used as a last resort as intended. Parliament's reasons for enacting the legislation are many. One reason is improving the quality of government decision making. Trends in relation to decision making may be monitored over time and provide some information about whether the legislation is an element in people's perceptions about government decision making.

OIC's functions include promoting greater awareness of the operation of the legislation in the community and within government. The survey was conducted in part to assist monitoring of the progress of the RTI reforms as required by sections 128 and 131 of the RTI Act. This monitoring will be better informed by the comparison of results over time. The results of this initial survey have been of practical use in informing the development of general awareness strategies, resources and training.

For example, the results of the survey indicate that there would be little value in a large scale awareness campaign and that because of the very small proportion of the general population involved in making formal access application, awareness raising strategies are better placed closer the point in time people receive government services. The high level of awareness may be a result of the work the media has done since the introduction of the *Freedom of Information Act* 1992. The increase in use of formal access applications by journalists since the introduction of the new legislation may work to further promote it.

The survey itself can also be used as a promotional product. OIC has sought to publicise the survey results as a media event designed to raise awareness. The survey results have also been used to promote awareness within government through use in a range of discussions and papers presented to CEOs, SES and the public sector. An important message for agencies is the public's high level of awareness around information rights and that their expectations are higher than the legislation actually provides for. Of particular note, is the apparent public's expectation of an unfettered right to access public sector information. This has implications for issue management by the public sector and is assisting OIC develop key messages for the public sector around the use of transparency in issue management. The surveys will also be used in educational material and be a resource for academic researchers.

The lower public confidence observed in regional Queensland has supported a range of activities. For example, OIC staff maintained a stall at the Local Government Managers Association Conference in Yeppoon on 6-9 September 2011. A privacy workshop is planned for Townsville as is the introduction to OIC's audit tool. In addition OIC is increasing and improving its online presence with online training modules being developed for the IP Act (General awareness and health specific) and the RTI Act (introduction). All three online training courses are planned for release in 2012 with the first offering, IP Act (General awareness), expected to be launched before the end of March 2012.

The Information Commissioner recently met with Logan Elders to speak about OIC services and hear the community's issues.

1.7 As a result of the *Public Awareness* report, are there any activities that the OIC has ceased or commenced?

As discussed above the report provides guidance about promotional strategies. There is less planned investment in broad public awareness raising activities. Public awareness strategies need to be tailored to the point of service delivery when they might contemplate utilising their access rights. The survey has informed the need for the better use of transparency in issue management across the public sector.

- 2. The OIC's report entitled *Public Sector Attitudes to Right to Information: Results of the Queensland Public Sector Employee Culture Survey* (the *Public Sector Attitudes* report), tabled in June 2011, examined the public sector culture of openness by surveying the attitudes of public servants to the reforms. The *Public Sector Attitudes* report gathered baseline data so that future surveys will be able to assess the progress against the baseline results of the report (page 10 refers). In the OIC Annual Report 2010-11 (at page 4), the Commissioner states that 'it will take some time before the principles are the accepted norm in the minds and actions of public servants'. The results of the *Public Sector Attitudes* report will be used to inform agency and OIC programs (page 4 report).**

2.1 What were the key findings of the *Public Sector Attitudes* survey and how has the public sector responded to those findings?

The key findings of the survey were that:

- Four in five public service employees agreed that RTI and IP reforms have had a positive impact on their agency and that their agency has a culture open to the release of information.
- Over three quarters agreed that the agency now publishes information as a matter of course and has employed new strategies, particularly new technologies, to make information publicly available.
- Public servants believed the reforms had been well implemented, but more work was needed. Senior public servants were more conscious of the implementation effort than front line staff.
- Public service employees in two regional areas, Wide Bay Burnett and Fitzroy, expressed less positive views than other regions of Queensland.
- Just over half the public servants acknowledged training had been conducted and was effective, but thought that more training within agencies was needed to explain how the reforms apply to their day to day work.

The findings confirm the implementation efforts of agencies and act as an important cultural reinforcer or normaliser i.e. the survey report is a reminder to agencies that other agencies are taking active measures to comply with their statutory obligations and that the culture is changing. The survey report also provides a prompt to agencies of the need to undertake ongoing maintenance measures such as training. OIC did not formally seek feedback from agencies on this report.

2.2 What was the cost of conducting the survey and producing the *Public Sector Attitudes* report?

The total project cost for the survey was \$34,964 (GST inclusive).

2.3 Was the OIC satisfied with the design, methodology, conduct and analysis of the survey? Are there any areas where the OIC would make changes in future?

The survey is an important mechanism through which public sector employees can let an independent person know their perceptions of implementation within their agency. The survey equips OIC to assess any correlation between what agencies say they do and what employees see them doing. This is an important check on the self assessment survey methodology used by OIC to provide a whole of public sector view on implementation and compliance with the laws.

OIC was satisfied with the design, methodology, conduct and analysis of the survey. OIC and OESR have discussed refinement to the survey and methodology as part of continuous improvement. Any changes will be carefully considered to ensure that results of future surveys can be compared against the baseline results provided by this survey. For example, OESR has highlighted that the lack of a "neither agree nor disagree" option might have inflated the proportion of "don't know" responses. OIC will discuss with OESR the incorporation of a neutral option in the re-run of the survey.

2.4 What are the OIC's plans for conducting future attitude surveys?

OIC intends to repeat the survey in 2012-13. The results of large scale surveys are likely to show less variance when conducted in short succession. OIC will review the frequency of the Public Sector Attitudes survey once the 2012-13 survey results are available.

2.5 Is the OIC funded for conducting future attitude surveys?

OIC receives expense funding for supplies and services. Activities are prioritised and budgeted for in the annual budget.

2.6 Please outline how the results of the *Public Sector Attitudes* report are being used to inform agency and OIC programs now and in the future?

One of OIC's functions is to promote greater awareness of the operation of the legislation in the community and within government. Survey results pointed to the need for further training. OIC has initiated a series of online training programmes called ABCs for Public Servants to ensure all public servants have access to initial training in rights and obligations under the RTI and IP legislation. Online training will be available in privacy, RTI and information rights more generally. It is hoped that the uptake of OIC's training across the public sector, including universities and local government, will improve awareness but also equip public sector employees to talk about people's rights and responsibilities in their own community networks. It is anticipated that online training will make training more accessible to regional public sector employees. Such training if implemented over time will support cultural change in the public sector, even in agencies where the culture may be slow to change.

2.7 As a result of the *Public Sector Attitudes* report, are there any activities that the OIC or agencies have ceased or commenced?

OIC is planning specific training activities in regions where confidence in implementation is lower as observed through the survey results. Training will be scheduled for the Fraser Coast region including a general RTI and IP awareness session and the Fast Track Negotiation Skills Training.

OIC is continuing to identify and develop tools that will influence public sector attitudes and improve awareness. The public sector community is being engaged in this process, for example, in market testing new OIC banner messages. Queensland public servants were invited to vote on the slogan that they believed best described what OIC does. The online survey received 218 responses.

Service 1 – External Review

3. The number of applications received in 2010-11 was at a similarly high level to the previous year at 412 of 439 applications. The number of applications on hand increased slightly in 2010-11 from 158 to 163. The OIC reported that the increase in applications on hand reflects the OIC's inability to close the high volumes of

applications received, despite it closing the highest number of files on record. The annual report stated that 'this provides a measure of the adequacy of the quantum of resources in circumstances where there is a heightened level of demand and no efficiency concerns'.

3.1 Please provide an update on the numbers of External Review applications received, closed and on hand since 30 June 2011 to date, broken down by category as in the Appendix to the Annual Report (p 59). Please explain any trends.

As at 31 January 2012 OIC had received 240 applications. The high level of incoming applications is continuing.

The number of external review applications on hand on 30 June 2011 was 168. The number of external review applications on hand as at 31 January 2012 was 182. The number of applications on hand is increasing. The increase primarily reflects the ongoing difficulty in meeting the sharp increase in demand and the increase in the proportion of applications that require substantive work.

The number of external review applications closed by 31 January 2012 was 224 compared with 223 at the same time last year. The number closed is significantly fewer than that received. OIC is continuing to close applications at record levels and is on target to achieve the record number closed in 2010-11 of 395. These are record numbers, all the more significant because of the changing profile of external review applications.

The most significant change in the profile of external review applications as far as closure numbers and timeliness are concerned is the sharp decrease in the number of files closed due to lack of jurisdiction. For example, in 2008-09 prior to the introduction of the new legislation, OIC summarily closed 103 external review applications (or 30% of incoming applications) because the application was not within OIC's the jurisdiction. Year to date this year OIC has summarily closed 18 external review applications (or 7% of incoming applications).

| Category and No. of external review applications | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 01/07/11 – 31/01/12 | | |
|--|------------|------------|------------|------------|------------|---------------------|-----------|------------|
| | | | | | | RTI | IPA | Total |
| Initial FOI/RTI/IP Application | 12 | 6 | 3 | 7 | 10 | 2 | 3 | 5 |
| Deemed Refusal of Access | 51 | 76 | 43 | 51 | 48 | 11 | 9 | 20 |
| Deemed Refusal of amendment | 3 | 2 | 0 | 3 | 1 | N/A | 1 | 1 |
| Fees | 6 | 14 | 49 | 6 | 3 | 0 | 0 | 0 |
| Charges | 3 | 5 | 3 | 2 | 1 | 2 | 0 | 2 |
| Statements of Affairs | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Refusal of Access | 125 | 131 | 177 | 251 | 236 | 123 | 37 | 160 |
| Refusal of amendment | 6 | 3 | 5 | 9 | 6 | N/A | 2 | 2 |
| Agency refusal to deal | 11 | 5 | 3 | 22 | 22 | 2 | 2 | 4 |
| Reverse FOI | 15 | 21 | 14 | 14 | 36 | 30 | 0 | 30 |
| Sufficiency of search | 32 | 26 | 42 | 74 | 49 | 9 | 7 | 16 |
| Total applications received | 264 | 289 | 340 | 439 | 412 | 179 | 61 | 240 |

4. The Commissioner reported the biggest challenge for the OIC in 2010-11 was the demand for external review, and predicted a continuing strong demand in this area (Annual Report 2010-11 p4).

4.1 What are the OIC's key strategies for responding to this challenge during 2011-12?

OIC has a number of strategies in place to assist it manage the high demand for external review. These are comprised by consolidation of efficiency gains and continual improvement, a temporary increase to funding from OIC's previous years savings, capacity building, and advice to government on policy considerations.

Consolidation of efficiency gains and continual improvement

In two consecutive annual reports OIC has reported improvements in efficiency of 35% due to business process improvements. The strategies behind these improvements have been critical to assist OIC meeting the increase in demand. The improvements are measured by the improvements in timeliness from 2007-08 to 2009-10. The decrease in timeliness that occurred in 2010-2011 is attributable to the sharp increase in external review applications and the changing profile of applications. The decrease in timeliness would have been far greater if the efficiency gains had not been consolidated and carried through.

Newer initiatives such as the team-based management structure, standardised case management reporting and standardised supervision are also contributing to efficiencies. OIC is also piloting the use of legal research assistants, called Assistant Review Officers in support of each of the teams. Over the next 12 months different approaches to managing 'sufficiency of search' matters will be considered. The annotated legislation will better support efficiencies once it is loaded onto the intranet and website by improved accessibility to staff. Its upcoming public availability through the website will hopefully improve the quality of submissions made by parties in the course of review.

Prior to the introduction of the new legislation, decision making was delegated to the Assistant Commissioner position. To ensure consistency in the interpretation of the new legislation, decision making was undertaken by the Information Commissioner on the commencement of the legislation and subsequently by the RTI Commissioners upon their appointment. With over two years experience with the new legislation, Assistant Commissioners are again delegated to make decisions. Increasing the number of decision makers should assist efficiency.

OIC has identified possible legislative tools to assist with efficient application handling for consideration in the legislation review.

Temporary funding

Temporary funding arrangements have been in place while the Department of Justice and Attorney-General is considering a permanent solution to the demand issue. OIC is working with the relevant bodies to try to find a permanent solution to the increase in

demand. It is apparent that even with these additional resources, the resources are not sufficient to meet ongoing demand for external review services.

Capacity building

The range of strategies OIC has in place to build capacity in agencies contributes to the management of demand for external reviews. This includes continued high demand for access training and the specific Negotiation Skills Training developed this year. Equipping the sector to better respond to access applications and in publishing more information should assist in containing demand for external review.

OIC continually revises and reviews its guideline and information resources to ensure they are relevant and up-to-date.

The annotated legislation which forms part of the Knowledge Management system will further assist agencies in the initial decision-making process when it becomes publicly available.

5. The OIC implemented a new case management system from 1 July 2010. The Commissioner told the previous committee review in February 2011 that the changes will provide the data necessary to inform strategies for future quality improvement including timeliness.

5.1 Please provide an update on progress with the case management system

The changes to the case management system have been fully implemented. Staff have been trained and are utilising the system.

5.2 Has the system yielded the predicted benefits? If not, why not?

As planned, the changes to the case management system now allow cases to be monitored by stage and uniform progress reports can be printed. Managers and supervisors use the system on a daily basis to monitor and manage individual cases. At an individual case level, the system has been very beneficial in streamlining and enhancing the supervision and management of cases.

Data concerning delays can now be produced. Analysis of the data identifies that the volume of work is currently the most significant factor causing delay in the completion of matters. "Sufficiency of search" matters have been identified as a type of matter where different procedures may expedite outcomes.

6. The Office exceeded its target of 90 median days to finalise external reviews, achieving 77 median days in 2010-11, compared with 37 days in 2009-10. In response to questions during the previous committee review in February 2011, the Commissioner discussed factors affecting performance against targets and whether the targets should be revised. The Commissioner stated that 'it is desirable for the system to stabilise with respect to the key factors presently influencing our

timeliness before the median day measure is refined' (Response to Question 2 refers, Appendix A, p 9 committee report)

6.1 What is the OIC's current view of the appropriateness of the service standard targets for Service 1, and does the OIC have any plans to review these targets?

OIC reviews all of the targets annually in keeping with whole of government processes. An assessment of whether the key factors have stabilised will be made in the course of the next whole of government process. The most appropriate time to consider a change to the median days target will be after a permanent solution is found to the increase in demand and type of demand for OIC services.

7. In 2010-11 the OIC achieved 96% against a target of 75% in the percentage of agencies who were satisfied with the review service provided. Conversely, the OIC achieved 68% against a target of 70% in the percentage of review applicants who were satisfied with the review service provided (Annual report p12)

7.1 What were the key areas where review applicants were not satisfied, and what action is the OIC taking in response?

The key area of concern to applicants who completed surveys continues to be timeliness despite the enormous improvements made in timeliness over recent years. The large increase in the volume of applications received has increased the length of time external reviews have taken. The actions OIC is taking to improve timeliness are outlined in answer to Question 4. In addition OIC has taken steps to manage review participants expectations by providing advice in correspondence and regular updates on reviews.

It would appear from the free text comments made by a number of dissatisfied applicants that the survey respondents had experienced external reviews that took over 8 months to complete. The legislation requires OIC to conduct external reviews with as little formality, technicality and with as much expedition, as the requirements of the legislation and a proper consideration of the matters before the commissioner allow. While the increased volume of external review applications has decreased the timeliness of review, some external reviews can take more time for a range of legitimate reasons. The frustration applicants can experience in these matters is both regrettable and understandable.

7.2 What does the OIC consider are the key reasons for the difference in achievement of satisfaction with the review service between applicants and agencies?

There are many possible factors which may affect applicant and agency responses. Some of the factors include the following.

Many applicants make only one external review. Many agencies are required to respond to more than one application in the calendar year. An agency may experience one lengthy external review but a number with short time frames and this would affect its

response in the annual survey. However an applicant with only one lengthy review process to give feedback on will comment accordingly.

The composition of applicant and agency respondent pools may vary according to the outcome of a review. For example, the applicant pool may be comprised of a greater proportion of people who did not get the outcome they were seeking. This difference in samples may affect the survey responses.

External review differs from other quasi-judicial and judicial proceedings in one key aspect: Applicants seeking a review of an agency's decision not to disclose information are unable to view the information during the course of the review whereas agencies are fully aware of the content of the information. This can create a feeling of disadvantage for applicants and injustice if as a result of the review, they are still unable to see the documents they are seeking.

77% of access applications in 2010-11 were made by individuals. The external review process determines an individual's legal right to access public sector information. It would be reasonable to expect that generally speaking, an individual's investment in and feelings about the information they are seeking is far greater than a public sector employee feeling about its disclosure, particularly when agency surveys are mostly completed by the respective RTI Unit which is one step removed from those public sector employees responsible for the generation of and responsibility for the content of the information being sought. There are of course exceptions to this generalisation.

8. The OIC reported that it would be developing a resolution training package as a demand-management strategy in 2010-12 (Annual Report p12).

8.1 Please provide a progress update on this work?

A two-day training program has been developed called *Fast Track Negotiation Skills*. The program was developed in consultation with agency practitioners and is specifically tailored to the information rights context. The training was successfully piloted on 22-23 September 2012. The Queensland Police Service were the first agency to undertake the training on 29-30 November 2011. The next training is scheduled for 16-17 February 2012 and was fully subscribed within one week of registration opening. Further sessions in 2012 are planned for 2-3 April, 12-13 June, 26-27 July and 23-24 August and will include delivery in at least one regional centre. Feedback from participants has been strongly positive. An interim project report was published on the OIC website in October 2011 and is available at: <http://www.oic.qld.gov.au/files/Fast%20Track%20Negotiation%20Training%20Project%20Interim%20Report%20v1.0.pdf>

A copy of the interim project report is also attached for the Committee.

8.2 What benefits does the OIC expect to see from implementing this strategy?

OIC expects to see an improvement in stakeholder engagement by agencies with medium term benefits including improved access application handling through better definition of application scope and a reduced number of unresolved issues on external

review. An increased number of applications resolved by agencies through negotiation should also reduce the number of applications for external review. Greater engagement by agency RTI units with internal stakeholders is also likely to improve prioritisation of resources, uptake of strategies to make information available without recourse to RTI applications. The strategy is also aimed at culture change within RTI/IP Units so that information rights officers see their role as facilitating access to as much information as a person is entitled to receive under the legislation rather than as gatekeeper.

Recommendation 76 of the FOI Independent Review Panel Report is

The Information Commissioner should develop a training program for agencies, based on those developed by the NSW Ombudsman, to help agencies engage productively with requesters, and share practical strategies for dealing with unreasonable requester conduct.

The resolution training package has a component on dealing with unreasonable requester conduct aimed at building the capacity of information rights practitioners to identify and manage unreasonable requester conduct. This may improve confidence levels in practitioners..

Service 2 – Privacy complaint resolution

9. A very low number of privacy complaints were received in 2010-11 (33 complaints).

9.1 How does this compare with privacy complaint levels in other jurisdictions?

Victoria and NSW have well-established legislative privacy regimes which regulate the way state government agencies handle personal information. These states provide the best basis for comparison with Queensland as their Privacy Commissioners perform a similar complaint handling function to that in OIC. Generally speaking, Queensland will always receive proportionately fewer complaints than Victoria because of demographic and geographic issues, as well as factors such as the size and nature of the public sector.

OIC received 33 privacy complaints in 2010-11 - the first full year of operation of OIC's privacy complaint handling function. This number of privacy complaints is comparable to those received in the early years of equivalent jurisdictions.

The number of privacy complaints is increasing. In the six months from 1 July to 31 December 2011, OIC received 32 privacy complaints. If the current rate of receipt of privacy complaints continues, the number of privacy complaints will be on a par with those of more established privacy jurisdictions in other states.

In Victoria, the privacy complaint handling jurisdiction commenced on 1 September 2002. In the 10 months between 1 September 2002 and 30 June 2003, the Victorian Privacy Commissioner received 25 complaints. In its first full year of operation – 2003 – 2004 - the Victorian Privacy Commissioner received 47 privacy complaints. This slowly increased to 100 complaints in 2010-11.

A higher number of complaints were received by the NSW Privacy Commissioner in the early stages of its operation. The provisions of the Privacy and Personal Information Protection Act 1998 (NSW) which authorise the Privacy Commissioner to investigate and conciliate complaints came into force on 1 June 1999. In the 1999 - 2000 financial year, the Privacy Commissioner opened 227 privacy complaint files.

The high number of privacy complaints in NSW in its first year of operation may be explained by the fact that at that time, the Privacy Commissioner was a new iteration of the NSW Privacy Advisory Committee which had been in operation and performing a privacy complaint handling role since 1975. The NSW Privacy Commissioner also had jurisdiction, at that time, to investigate complaints about private sector organisations.

The current levels of privacy complaints in NSW are lower. In the 2009 - 2010 financial year, the NSW Privacy Commissioner received 64 privacy complaints and 94 privacy complaints in the 2010-11 financial year.

In its first 6 months of operation - 1 January to 30 June 1989 - the Australian Privacy Commissioner¹ received 21 formal complaints. In 2010 - 2011 the Australian Privacy Commissioner received 148 privacy complaints involving government agencies (the equivalent area of operation to Queensland).

9.2 Does the OIC consider the level of privacy complaints an accurate reflection of agencies' performance in the area of information privacy?

No. OIC has limited information from privacy complaints on agencies' performance generally in the area of information privacy. The relatively small number of privacy complaints and the nature of the complaint process limits any wider conclusion beyond that of the individual subject matter of the complaint.

Before lodging a complaint with OIC, individuals must first complain to the agency concerned. OIC sees only those complaints that were not successfully dealt with at an agency level and which the complainant has opted to escalate to OIC. There is no legislative requirement for agencies to report on the number, nature and outcome of privacy complaints made to them.

The number of privacy complaints made about an individual agency would also need to be analysed in the context of the nature of the business.

Service delivery targets

10. The 2011-12 State Budget Service Delivery Statements for the OIC indicated that the following targets were under review (p 3-221 refers):

- **Median days to finalise a review**
- **Percentage of privacy complaints not formally referred to QCAT for determination**
- **Median days to finalise a privacy complaint**

¹ At that time, the Australian Privacy Commissioner formed part of the Human Rights and Equal Opportunity Commission.

10.1 Please provide an update on progress with the review of service delivery targets. What work has the OIC done, or is doing, in this area?

OIC reviews all of the targets annually in keeping with whole of government processes. With respect to the review service target, an assessment of whether the key factors have stabilised will be made in the course of the next whole of government process. The most appropriate time to consider a change to the targets will be after a permanent solution is found to the increase in demand and type of demand for external review services.

With respect to the privacy complaint targets, 2010-11 was the first full year of operation of the complaints function. Of the 33 privacy complaints lodged with OIC in 2010 – 2011, only one was subsequently referred to QCAT for determination – accordingly, 97% of privacy complaints were not formally referred to QCAT for determination. The median days to finalise a privacy complaint was six. The targets for these two measures are 75% and 90 days respectively. The privacy workload is growing and the population of complaints from which targets are to be gleaned are very small. Caution must be exercised in settling targets at this early stage of implementation as there may be large variations in performance explained by the nature of individual complaints.

OIC will review targets in the next whole of government process with the benefit of further data from 2011-12. As part of the review OIC will research and consider targets in comparable Australian privacy jurisdictions.

10.2 Are any other service delivery targets under review?

All service delivery targets are reviewed annually as a part of the whole of government process.

10.3 (if applicable) Why is the target for percentage of agencies who were satisfied with the review service not included in the review of service targets?

All service delivery targets are reviewed annually as a part of the whole of government process. This target will also be reviewed.

Service 3 – Performance and reporting

11. A key activity for the OIC during 2010-11 was to develop and implement a strategy to monitor, audit and report on agencies' compliance with the legislation (Annual Report 2010-11 p22). The Information Commissioner has tabled five reports in this area in 2011. The key findings of the first three are reported in the Annual Report 2010-11 at pp 23-24:

- 'Disclosure of Personal Information – Review of Translink's disclosure of go card information to the Queensland Police Service'

- 'Results of Desktop Audits – Review of Publication Schemes, Disclosure Logs and Information Privacy Awareness in Departments, Local Governments and Universities'
- 'Agency Progress on Right to Information Reforms – Results of the self assessed electronic audit completed by Queensland public sector agencies'
- Compliance Review – Queensland Health: Review of Queensland Health, Corporate Office, and Metro North and Metro South Health Service Districts' compliance with the Right to Information Act 2009 (Qld) and the Information Privacy Act 2009 (Qld).
- Compliance Review – Queensland Police Service: Review of Queensland Police Service compliance with the Right to Information Act 2009 (Qld) and the Information Privacy Act 2009 (Qld).

11.1 Has the OIC identified any overarching themes or trends as a result of its compliance monitoring, auditing and review activity to date?

The initial performance monitoring and review activities of the OIC have found that overall there was an encouraging level of commitment to the reforms and implementation of legislative requirements within the public sector. Key themes or trends identified or confirmed through performance monitoring and review activities include the significance of:

- engagement with the community so that more information flows to the community that the community wants, in a format that the community can use;
- active leadership in implementation of the reforms to drive culture change and critical information management projects; and
- increasing visibility and promotion of available information and processes to access information, including improvements to publication schemes and promotion of administrative access schemes.

11.2 What are currently the key areas for agency improvement?

The key areas for agency improvement are primarily those related to the overarching themes identified in 11.1. A critical area for continuous improvement is for agencies to ensure they have a plan in place to steadily improve the availability and accessibility of government-held information over time. Agencies need to engage with the community to strategically identify the information that will make a significant difference to services and the objective of an informed community. In the case of the Queensland Police Service compliance review, OIC recommended that a full set of crime statistics should be published, in a machine readable, re-usable format, linked to geospatial information.

11.3 How is the monitoring and auditing work to date informing agency and OIC programs?

Specific opportunities for improvement have been identified for particular agencies through some of the performance monitoring activities. For example, compliance reviews for Queensland Health and the Queensland Police Service, desktop audits of agency websites and the review into the personal information handling practices of TransLink have included specific recommendations for those agencies to implement.

OIC notes that in some cases action on meeting review recommendations was in progress or complete prior to reporting on the relevant review.

Performance monitoring work to date has informed OIC activities in a number of ways. For example:

- New information resources have been developed to provide guidance on specific aspects of the application of the legislation where practices were identified that were inconsistent with the legislation, or greater clarity was required to support agencies.
- The development of the Fast Track Negotiation Skills training has been enhanced through the insight provided through the agency compliance review reports regarding contacting the applicant and relevant procedural implications. OIC has been able to identify good practices that can be modelled to other agency officers, and gain a greater understanding of motivations for ineffective practices.
- Issues have been identified during monitoring activities for specific consideration by OIC due to broader relevance and importance to administration of RTI or IP across the sector.
- Key messages based on information from surveys conducted have been used in communication and awareness raising activities.

12. The OIC reports that a working list of 212 auditable agencies out of 604 eligible entities was settled in 2010 as a basis for the performance monitoring work.

12.1 Why were approximately 400 agencies not identified as auditable?

A large proportion of the 400 entities excluded from the working list of auditable agencies were, for the purposes of the auditable requirements of the RTI and IP legislation, included within a larger agency. For example, Departmental publication schemes often include smaller entities such as Boards. This approach is permitted under the RTI Act (section 20(2)). Other entities were considered non-auditable were boards or other entities that were to be abolished, such as over 60 Water Boards at that time.

12.2 What are the implications of this assessment for compliance monitoring and review of those agencies?

As a large proportion of the entities not specifically included in the working list of auditable agencies will be considered as part of a larger agency for OIC performance monitoring purposes, this approach will have minimal impact on the scope of this function. The remaining entities are considered of low risk from a risk analysis perspective and therefore would not rate highly in terms of prioritising OIC performance monitoring activities.

Service 4 – promotion within community and government

13. The OIC reported that it increased its web functionality and used social media to increase communication opportunities in 2010-11.

13.1 Did the OIC measure the change in engagement level through using these communication avenues, and with what result?

OIC web and social media activities are monitored, measured and analysed to gauge their reach and impact.

OIC Twitter account has approx 200 registered followers and continues to grow. Of note: two sizeable events, one for public servants (Workshop with Andrew Stott) and one for the community (Solomon Lecture) promoted through OIC Twitter account, received significant attention resulting in both events 'trending' in Brisbane across the social media site.

To date over 800 Tweets have been posted. Web analytics confirm Twitter as a primary referring site for OIC web traffic, second only to Queensland government site (www.qld.gov.au).

OIC's YouTube channel hosts 27 videos relating to information rights. These have received approximately 1300 views.

A blog has been implemented recently to discuss various topics from time-to-time and provides an opportunity for individuals to post comments. While participation has been limited, the functionality offers another communication channel whilst contributing to search engine optimisation.

An online poll has also been implemented as another method of engaging with the community. Again, participation to date has been limited.

13.2 Does the OIC intend to continue using social media as a communication tool, and are any refinements of approach needed?

OIC intends to continue using social media as a two way communication tool. One refinement revolves around improving the ease with which users can rate and share content with other users via social media. This refinement is being built into the OIC website redevelopment project scheduled for completion mid 2012.

Another refinement involves continuing to incorporate social media into OIC performance, monitoring and reporting activities. Through social media, such as the blog, individuals can openly and freely contribute information, views and feedback regarding OIC activities such as monitoring of agency compliance with RTI requirements.

14 Demand for advice and assistance significantly exceeded target in both 2009-10 and 2010-11, with 3470 enquiries in 2009-10 and 4078 in 2010-11 (Annual Report 2010-11 p 27)

14.1 How are enquiries tracking since 30 June 2011?

OIC counted as received 1958 enquiries in the 7 month period 1 July 2011 to 31 January 2012. This level of enquiries is consistent with 2009-10 and indicates the

information and assistance enquiry service continues to be an important resource for the community and government agencies.

14.2 Does the OIC have the resourcing and capability to handle this and the forecast level of enquiries in the future?

OIC has adequate resourcing for the level of enquiries experienced since this function commenced on 1 July 2009.

Organisational capability

Staffing and leadership

15. The committee notes the resignation of the Privacy Commissioner, Ms Matthews, for family reasons, effective 31 October 2011, after 16 months in the role.

15.1 Please update the committee on the staffing changes in 2010-11, and between 1 July 2011 and 31 December 2011.

In 2010-11 three staff resigned and ten staff were permanently appointed. Filling the vacancies resulting from the resignations resulted in consequential vacancies. These vacancies were subsequently filled through merit selections. OIC also appointed two Right to Information Commissioners on a job share arrangement.

Since 1 July 2011 one staff member resigned and three staff have been permanently appointed.

15.2 Please provide an update on progress in filling the position of Privacy Commissioner.

The process to appoint a new Privacy Commissioner is a matter for the Minister. Under the provisions of the Information Privacy Act 2009 the Minister must consult with the parliamentary committee about the process for appointment and place press advertisements calling for applications.

The Minister must also consult with the parliamentary committee about the appointment of a person as Privacy Commissioner. The Privacy Commissioner is appointed by the Governor in Council.

15.3 Does the OIC anticipate any other staffing issues for the remainder of 2011-12? If so, how are these issues being managed?

The most significant staffing challenge for OIC in 2011-12 is continuing to manage the increased workload in external review with temporary resources over a three year period of time while a permanent solution is found. Reliance on a large number of temporary resources creates instability and inefficiencies which need close management. These include increased turnover and consequential increased use of resources in training and management of new staff. There are a number of systems

and structures in place to assist with this dynamic: the electronic knowledge management system which has captured the corporate memory and makes information readily accessible, even for new starters, the improved team based structure which facilitates better staff supervision and support, the development of an external review induction process and resources in addition to the corporate induction process for new starters etc.

There are a significant number of staff (six) as a proportion of the establishment on maternity leave or about to go on maternity leave or in the process of returning full time from maternity leave. Such absences are backfilled temporarily, a less stable form of employment for both the temporary employee and employer. Because of the specialised nature of OICs work and the functions within OIC, it can be difficult to find people with the right skill mix to fulfil necessary duties for short period of time. This is primarily managed through planning and merit selection processes.

Electronic knowledge management system

- 16. The OIC reports that during 2010-11 it significantly developed its electronic knowledge management system. Work will continue on making the electronic knowledge management system publicly accessible through OIC's internet site, and the OIC anticipates that the site will be launched in 2012 (Annual Report 2010-11 pages 8-9)**

16.1 Please provide an update on this project. Is it on track and on budget?

The Electronic knowledge management system is on track and on budget. The content covering the FOI, RTI and IP Acts has been prepared. The project is now moving into the development of the system's web functionality and related specifications. This process has been built into OIC's website redevelopment project. Both projects are on track and on budget with an expected launch date of mid 2012.

Financial performance and budget

- 17. OIC reported a net deficit in 2006-07, and net surpluses in 2007-08, 2008-09, and 2009-10. The operating surplus of \$750,000 in 2009-10 was reduced to zero in 2010-11 and is forecast to remain at zero in 2011-12. The OIC had increased appropriation funding over the three years 2009-10, 2010-11 and 2011-12.**

17.1 What are the key reasons for reducing the net deficit or surplus to zero in recent years?

The net deficit of \$180,000 reported in the 2006-07 financial statements occurred prior to the current Information Commissioner's time. It appears to be associated with pro-rata unfunded depreciation following OIC's machinery of government move from the Office of the Ombudsman and employee expenses due to enterprise bargaining unfunded at that time.

The estimated operating surplus of \$750,000 in 2009-10 reduced to zero in both 2010-11 and 2011-12, as they appear in the Service Delivery Statements are the best

estimates made of the end of year position. The estimate is made well before the end of year financial statements are available and in which the actual surplus position is known.

The actual surpluses reported in the financial statements for the years 2009-10 and 2010-11 are primarily the result of timing issues. The primary reason for the 2008-09 surplus was the savings associated with unspent funds appropriated for temporary accommodation to house the implementation team. It had been anticipated that temporary accommodation across four sites may have been needed but because of the nature of the available accommodation available for lease at that time, significant savings were made.

Generally speaking OIC received increased appropriation funding in 2009-10 through to 2011-12 for costs associated with moving to new accommodation and ongoing resources to fund the new functions introduced under the RTI and IP legislation. There are two primary contributors to the size of the 2009-10 surplus. They are the significant savings made on the re-location of OIC into a permanent home as reported previously to the Committee and unspent employee expenses associated with the rapid expansion of OIC i.e. With budget approvals received in or around May for a 1 July implementation date, it necessarily takes some time to recruit into all positions. Significant interest earned on surplus monies in the bank account has also compounded the surplus. Because the surpluses accumulate at bank, interest received has risen significantly. The additional interest earned is not a part of the approved budget for expenditure so this has been accumulating year on year and appears in the surplus.

With the re-location and implementation complete, the surplus will return to more normal levels, bar the interest contribution.

17.2 What are the future implications for the OIC of eliminating the net operating surplus in terms of adequacy of funding to meet service demand?

There are no implications for the adequacy of funding arising from the elimination of the net operating surplus because the surpluses have primarily resulted from major projects which are now complete. OIC will usually have an operating surplus at the end of the year because its internal controls are designed in part to prevent a budget overspend. Running an operating surplus provides some budget flexibility in terms of approved carry forwards to undertake specific projects or meet one off needs, such as the development costs for the resolution training package.

17.3 Does the OIC wish to raise any significant budgetary issues with the committee?

In my answers to the past two committee meetings I referred to the substantial increase in the number of external review applications as a result of the introduction of the 2009 legislation. The high number of applications continues. The contributing factors include the increase in the number of reviewable decisions and the removal of mandatory internal review by agencies of their own decision making under the legislation. Workload has also significantly increased by the sharp reduction in the number of matters that were summarily dismissed due to policy changes. This means that substantially more work is required to be done to process the increased number of applications.

OIC has done considerable work on its business processes and achieved a 35% improvement in efficiency gains in the two recent financial years. Despite these gains, OIC was only able to manage the increase in external review demand through a \$0.465M carry forward funding in 2010-11 and a \$0.489M equity withdrawal in 2011-12 to employ 4 temporary review officers. As I reported at the last year's committee meeting, submissions to secure a permanent funding solution have to date been unsuccessful. Without the temporary staffing OIC would have a steadily growing backlog of reviews with no prospect of clearing it. Timeliness decreased in 2010-11 as a result of the increased demand.

I wrote to the Department and Treasury in November 2011 requesting consideration of further equity funding withdrawal to maintain the 4 temporary review officer positions in 2012-13. Treasury responded by asking OIC undertake further work in conjunction with the Department to develop a permanent funding solution to be considered as part of the 2012-13 budget process. We are in the process of undertaking that work.

Strategic challenge – COAG reform agenda

18. In the Annual Report 2010-11, the Commissioner identifies the application of oversight laws to the various areas of the COAG reform agenda as an emerging challenge for Australian governments, and the need to support cohesive, accessible and efficient regulation (Annual Report 2010-11, p 4).

18.1 How is the Office responding to this challenge?

OIC identified that there are unintended consequences arising out of the national reform agenda for 'oversight laws' including in relation to RTI/FOI and information privacy. A number of disparate models of oversight laws have been developed for different national laws as part of the COAG reform process. The result of this approach is an inconsistent, incoherent patchwork of oversight laws across the affected areas.

OIC has written to the Premier and the Attorney-General to alert the Queensland Government to the matter and recommend that a comprehensive consultation framework for RTI/privacy issues be developed and put in place for COAG's ongoing work programme. Until a consistent approach can be agreed for the various schemes, the Information Commissioner recommended Queensland identify principles to be applied in negotiations depending on the nature of the scheme to avoid additional complexity and fragmentation.

OIC has provided submissions on specific proposals. COAG has itself processes in place designed to pick up these issues and OIC has proposed an alternative interim model in response to the recent *Future COAG Regulatory Reform Agenda Stakeholder Consultation Paper*. The alternative model:

- reduces unnecessary administrative burden and costs on all jurisdictions;
- reduces legislative complexity;
- avoids unnecessary costs on business;

- avoids the confusion and inaccessibility created by multiple specialised oversight bodies;
- reduces the risk of unintended consequences; and
- reduces the substantial workload on eight legislatures of consequential amendments that would be required of a number of state statutes.

OIC has also liaised with counterparts in other jurisdictions to raise awareness and has received positive feedback on the proposed alternative model.

18.2 What are the key areas of the Office’s activity in this area, and what has been achieved to date?

As set out above, OIC has raised awareness and understanding of this issue and suggested alternative interim oversight arrangements model through submissions regarding specific national reforms and a broader review of the COAG regulatory reform agenda, and representations to the Premier and Attorney-General.

OIC has engaged effectively with Queensland Government agencies responsible for implementing current national reforms to raise awareness of the issue and assist those agencies to establish efficient and effective oversight arrangements.

18.3 What work is planned in this area in 2011-12?

OIC will continue to monitor emerging issues relating to additional national schemes and provide any advice and assistance to support the development of coherent oversight arrangements for new national schemes.

Review of RTI Act

19. Under section 183 of the RTI Act, the Minister must review the RTI Act starting no later than 2 years after its commencement. Responsibility for this review lies with the Department of Justice and Attorney-General.

19.1 What input has the OIC had into the review?

Sections 183 (RTI Act) and 192 (IP Act) state that the objectives of the respective legislative reviews include deciding whether:

- the primary object of the legislation remains valid
- the legislation is meeting its primary object
- the provisions of the legislation are appropriate for meeting its primary object

and investigating any specific issue recommended by the Minister or the Information Commissioner.

Officers of the Department of Justice and Attorney-General consulted the Information Commissioner on a draft terms of reference for the review in December 2010.

The Information Commissioner wrote to the Director-General of the Department of Justice and Attorney-General in June 2011 to offer to assist the review by commenting on and providing advice on the scope of any issue, options to address issues and possible unintended consequences of any draft amendments. The Information Commissioner also recommended a number of specific issues be investigated during the course of the review to improve the effectiveness and efficiency of the legislation.

19.2 If possible, please provide an update on progress with the review.

The Department of Justice and Attorney-General are responsible for progressing this review and best placed to advise on the current progress of the review. The involvement of OIC in the preliminary stages of this review is set out above.

Appendix B

Transcript of Meeting with the Office of the Information Commissioner



LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PW Wellington MP (Acting Chair)
Miss VM Barton MP
Mr WS Byrne MP
Mr SK Choat MP
Mr CJ Judge MP
Mr TJ Watts MP
Mr JR Woodforth MP

Staff present:

Mr B Hastie (Research Director)
Ms S Hunter (Principal Research Officer)
Mr P Rogers (Principal Research Officer)

MEETING WITH THE INFORMATION COMMISSIONER

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 20 JUNE 2012

Brisbane

WEDNESDAY, 20 JUNE 2012

Committee met at 10.45 am.

EX, Mr Lemm, Acting Privacy Commissioner

KINROSS, Ms Julie, Information Commissioner

MEAD, Ms Jenny, Right to Information Commissioner

SMITH, Ms Clare, Right to Information Commissioner

ACTING CHAIR: Good morning everyone. I declare this hearing with the Office of the Information Commissioner open. I thank the Information Commissioner and her staff for attending. My name is Peter Wellington, the member for Nicklin, and I am the deputy chair of this committee. Unfortunately our chairman, Mr Ray Hopper, the member for Condamine, is not well and is not with us today.

The other members of the committee present today are: Mr Trevor Watts, the member for Toowoomba North; Mr Bill Byrne, the member for Rockhampton; Miss Verity Barton, the member for Broadwater; Mr Sean Choat, the member for Ipswich West; Mr Carl Judge, the member for Yeerongpilly; and Mr Jason Woodforth, the member for Nudgee. Mr Brook Hastie is our research director.

The meeting is being conducted in public and is being transcribed by Hansard. For the benefit of Hansard, I ask that everyone identify themselves before speaking and to speak clearly and at a reasonable volume and pace.

The findings of the committee will be the subject of a report to parliament. The committee may make recommendations about the issues it deals with and the committee intends to publish the transcript as part of its report.

I thank the Information Commissioner, Ms Kinross, and her staff for attending. I understand that you have been provided with a copy of the instructions to committees regarding witnesses. I now invite the Information Commissioner to make an opening statement.

Ms Kinross: Thank you very much and thank you for the opportunity to make an opening statement this morning. Before I do that, I would like to introduce to you Ms Clare Smith and Ms Jenny Mead, both of whom are job sharing in the Right to Information Commissioner's role—so we have the benefit of having two heads for the price of one—and Mr Lemm Ex, who is the Acting Privacy Commissioner.

As the committee is aware, the Office of the Information Commissioner has a role to play in assisting the government's objectives with respect to accountability, revitalising front-line services and cutting waste. The office is a part of and supports the public sector's accountability framework. Its statutory role includes making government accountable in relation to right to information and information privacy obligations—in particular, making access to government information easier and better for the community.

Two significant obligations still requiring attention by agencies, with a few exceptions, are namely the publishing of all significant, accurate and appropriate public sector information and, following on from this, the use of information as a strategic asset. That these obligations have not been implemented universally is not surprising as public sector systems and skills are traditionally oriented to the 'need to know' rather than the 'right to know'.

If we have learnt anything from 2011-12 it is that what might be considered 'normal' community demand for the office's services is still to be settled. As expected, we are on track to receive from individuals more than 60 privacy complaints this year—double last year's number and equivalent to the complaints received in other jurisdictions. We expect this number to grow again in 2012-13. More privacy complaints have been accepted for mediation this year than previously.

Individuals primarily make applications for external review of agency decisions about access to information. The record levels of demand for external review continued in 2011-12 but so did our high closure rate, with a new record for closures to be set this financial year. As forecast, our timeliness again deteriorated due to these demand pressures. However, as we were able to address the build-up of older matters during 2011-12, it is anticipated that timeliness will again steadily improve, assuming a permanent solution is quickly found for our problem of increased demand.

We received over 3,300 inquiries during this year, fewer than the previous year, but the inquiries were more detailed and complex. Next year we plan to develop new resources for the community to answer frequently asked questions. It is hoped that this will lessen demand on agencies and then lessen the demand through to us.

The committee has already noted that five audit or review reports were tabled in 2011. The office has substantially completed three further reports expected to be tabled early in 2012-13. There is a compliance review of the Department of Transport and Main Roads. There is a report on camera surveillance and privacy across the public sector. This is a review of camera surveillance use by agencies and compliance with the privacy principles. The committee will receive a copy of the report. It will show that there is a lot of room for improvement with respect to agencies having policies and systems in place to ensure compliance with the privacy principles.

We have also largely completed an aggregate desktop compliance report of 130 Queensland public sector agencies. Again, that report will shortly be available for the committee's review. A feature of the transport and our future reports will be to assist agencies to deliver better and easier access to the community through compliance and other recommendations.

As I have previously flagged for the previous committee, dealing with demand has been an ever present challenge for us. I would like to take a moment, if I could, to update the committee on our more significant projects designed to improve efficiency and customer service and to reduce demand.

To improve consistency and timeliness of our service, we collated and organised in one accessible online location our research tools and information resources, case law and decisions from our own and other jurisdictions, including annotated legislation. The last of which, I believe, is a first for Queensland tribunals and equivalent types of bodies. In publishing this information online, we are fulfilling the obligation to publish significant information holdings and also the obligation to use information strategically. This published resource will be a valuable community resource. Publication will make access to both our own information and information held across government better and easier for the community.

The annotated legislation online tool will reduce the cost to the taxpayer of right to information through better equipped applicants and better resourced decision makers. It will reduce the costs of access to justice by minimising the need and costs of legal advice, legal representation and the need for appeals, and by making our own processes as timely, consistent and as certain as possible.

It is also a strategic use of this information asset as it will assist to put downward pressure on demand for our own services. This example of publishing online our information resources is a small but good example of how right to information is as much about micro-economic reform as it is about civil and democratic rights. While it makes government more accountable, it can also make service delivery effective, efficient and economical.

One of the historical and legitimate criticisms of freedom of information was the formal, legalistic access application process. This is one of the reasons for the legislative requirement on agencies to maximise the information they publish and the expectation that access applications will be used as a last resort. To improve our own service, we reduced the legalistic approach to external review by establishing an early assessment and resolution process. This improved the efficiency of external review by 35 per cent in two consecutive years.

Building on this internal expertise for resolution and to combat demand, we rolled out resolution training this financial year to build the skills of decision makers. This has been a significant undertaking. Such a project is in keeping with our statutory role of assisting agencies to improve service to those seeking access to information. The training has been universally well received and evaluated as improving skill levels of participants.

Unreasonable conduct by applicants takes up a disproportionate amount of agency time in managing access applications. We know from our own research that one per cent of our applicants are responsible for 20 per cent of the applications we receive. This is confirmed by my interstate colleagues, one of whom is a former Ombudsman. It is her view that there is a significant component of applicants of external review services who are more difficult to deal with than the clients she experienced at the Ombudsman's office.

ACTING CHAIR: Julie, can you go over those statistics again?

Ms Kinross: One per cent of our applicants are responsible for 20 per cent of our applications.

ACTING CHAIR: We might come back to that when you finish.

Ms Kinross: There is a component in the resolution training that focuses on managing unreasonable applicants. This training will assist agencies improve their handling of the applications. We are sure that, as a result, members of the community dealing with these officers will be better served and obtain better and easier access to information.

I made the first declaration of a vexatious applicant in Queensland under a provision in the legislation that is similar to the legislation permitting a Supreme Court justice to declare a legal proceeding vexatious. No person has been declared a vexatious applicant since the commencement of freedom of information in 1992. The person so declared was one of our top 10 flyers. Establishing some precedence around when such a declaration will be made will undoubtedly lead to more applications from agencies and, in time, the impact of removing vexatious applicants across the system will make the whole-of-government system more efficient and improve service delivery to what we might term as more regular applicants.

Training is one of the office's statutory functions. As demand for training remains high, we have included in our range of online resources online training. The first course on privacy is now available through our website and is provided by a company called E3 Learning Pty Ltd. The course is provided free of charge to all public sector employees for 12 months. This includes local government, universities, government owned corporations, statutory authorities and departments. In four weeks since the launch, 1,100 people have been trained. The privacy course will soon be followed by a special privacy course for Queensland Health and health authorities, a right to information course and a course on information obligations which will emphasise the obligation of confidentiality that public sector employees owe their employer.

Just touching on financial management, the office's cash reserves are large relative to our operating budget. The operating surpluses of statutory authorities accumulate at bank. The office's cash reserves have largely built up due to management decisions leading to the costs of implementation of specific initiatives being less than what they were budgeted for. Some examples of these decisions include savings of almost \$400,000 in minor equipment through the recycling of fit-out materials and revising operational needs, savings of almost \$700,000 through not assuming new accommodation leasing costs by housing staffing together, and saving \$1 million in fit-out costs through timing and not leasing new accommodation. The Treasury recently asked agencies to identify savings prior to the end of this financial year and because of our prudent financial management over the past few years we were in a position to offer up \$4 million towards the savings effort. That brings me to an end.

ACTING CHAIR: Thank you, and thank you for making your notes available to Hansard to assist them in the transcripts. You gave some amazing statistics that one per cent of applicants take up 20 per cent of your committee's time and resources. Is that consistent with other states?

Ms Kinross: Some years ago, the Ombudsman did some work around unreasonable complainants. It is one of the features of ombudsman schemes as well that there are some people who take up an inordinate amount of time. It is one of the challenges faced by information commissioners and ombudsmen and, indeed, agencies about how to manage those people respectfully and in an efficient way so that they do not take up an inequitable amount of public resource.

ACTING CHAIR: It certainly must be a challenge to deal with those people. Do you find that there are some departments or agencies that really seem to have a bit of a track record of not providing information that is sought in a timely fashion? I note question on notice No. 7 touched on the issue of how long it took to get information. My experience is that when someone makes a request to the department often there is a complaint about how long it takes to finally get that information. Sometimes it is, 'No, you can't', and they have to go back and hound it. Do you have any views on that issue at all?

Ms Kinross: In international jurisdictions, it is possible to receive a response to an access application within three days. All applications are processed and information provided within three days. There is a lot of difference between statutory frameworks and also information systems. The important component in the overseas examples is jurisdictions having in place information systems that allow them to retrieve information and produce it within that time frame. I think it would be terrific if that service could be provided to all members of the community, but that would require a significant investment in upgrading information systems.

ACTING CHAIR: I suppose that leads to a follow-up question, that we are all focused on trying to see how agencies—and you touched on this in your address—deal with cost savings. If it is the case that we want to improve the timeliness of getting answers to questions, what are the likely follow-on implications for costings to departments and resourcing? You have touched on that briefly, but is it a significant cost? If I can be blunt, sometimes I think that the Information Office is being a little more difficult in its willingness to provide the information that eventually gets provided, but the applicant has to keep pursuing it. Am I off the point?

Ms Kinross: You are speaking from your constituents' experience, so I cannot say that that is not the case. However, what you are asking me to comment on more broadly is what is the culture around information provision. I think it is a bit patchy. Some agencies are good; other agencies are not good.

ACTING CHAIR: Can you tell us which are the good ones and we will give them a pat on the back, instead of saying which are the bad ones?

Ms Kinross: I probably could name them, but that may not be fair.

ACTING CHAIR: Fair enough. I will not put you in that spot.

Ms Kinross: Part of our approach is to risk profile agencies so that we target our resources at the agencies that we think are riskier or less advanced in the implementation of the reforms. That is how we approach that.

Mr CHOAT: On the point of your focus on those agencies, does your office work with them to perhaps improve their position with regard to that provision? If you, let's say, were to get a lack of improvement or continuous improvement, are there avenues that you feel are effective enough for you to follow quite quickly?

Ms Kinross: The quick answer to your question is yes, but I would like to answer it more broadly initially. When the independent FOI panel reviewed the freedom of information legislation, it basically said that the legislation of itself does not make much difference; if you want better and easier access for people, it requires leadership—political leadership and leadership in the agencies.

To speak bluntly, and you have asked a blunt question: public servants will follow political leaders. The tone gets set at the top. They will not do anything that the political leadership does not want them to do. Solomon said that political leadership is probably the most important thing. The political leadership pushes open and transparent government then the public service will follow, but it also requires leadership in the public sector, so it is having directors-general and other CEOs who support the reforms and clearly articulate that and show leadership within their agencies around it.

The agencies where there are cultural issues are typically those agencies where those things are not aligned—not all the time, but typically that is where it is coming from. There are agencies like this where the leadership is unquestionably committed, but sometimes the implementation down and the organisation is patchy. Some of that stuff requires some mopping up and we can assist the leadership of the agency in helping them mop up patchy implementation within their agencies.

Miss BARTON: My question is a follow up to that one, rather than completely changing the subject. With those agencies that are perhaps somewhat reticent to, I guess, pass on the information as readily as others might, do you find that those agencies tend to be ones that deal with more sensitive matters generally and that might be a mitigating factor in their reticence or are they just generally reticent in their culture? Obviously you are not going to name the departments and agencies and I would not necessarily expect you to. For example, agencies like Child Safety or Health where there may be sensitive issues, I was wondering if the reticence is somewhat linked to the nature of what those agencies do and the sensitive matters that they may deal with?

Ms Kinross: When I was talking about the cultural issues, I was not including in that proper consideration of the information. Agencies like Health and the Department of Communities have significant sensitive personal information holdings. It is entirely appropriate for them to be cautious and to be considered in what material they release. If I could just speak again broadly about the public sector, the public sector can be slow to follow new initiatives, because they sit back and they say, 'There'll be a change of government and I don't want to put my flag onto that new initiative, because if the new government doesn't like it I don't want to be seen to have my flag on that mast.' There can be other reasons for reticence to—

Miss BARTON: I was not sure whether agencies that dealt with sensitive matters had been factored into those figures. Thank you.

Mr BYRNE: I will go back to the same sort of question that I asked in an earlier hearing with the Ombudsman. I asked specifically whether there had been any directions or approaches from the likes of Treasury or other elements about the cost-saving measures. The answer that I was given there was that there had been no direct approaches, et cetera, at this point, although the budget submissions were being developed. Correct me if I am wrong, but I understand that you guys have been approached and that that is the \$4 million that has been offered up in this current cycle of savings. I think you said that Treasury had approached you about savings. If that is the case, or I may have misunderstood, where is that \$4 million coming from? Does it connect to any FTE issues and do you have contracted staff or temps who are affected by that? That is pretty broad ranging, but that is my question.

Ms Kinross: No, that is lovely. The office did receive a letter from the Under Treasurer, the director-general of the Department of Treasury, saying that the government wished to find savings of \$100 million before the end of this financial year. It is in respect of that request to find savings that we volunteered up that \$4 million. The \$4 million does not impact or have any relationship with our operating budget this year. That is about cash in the bank. It is comprised solely of savings we have made. We have been given money in a proper budget process, but we have found ways of making savings so it has not been spent and it is just money sitting there in the bank. We have said we have no need for that money and it can be returned to consolidated revenue.

Mr BYRNE: Do you have any contracted or temporary staff?

Ms Kinross: The government has been very clear about the need to make savings, to tighten the belt. Our office has to join in with that effort, along with every other agency. Our budget will be decided in September, along with everybody else's budget. We will probably know in July what our budget for next year will look like.

Having said that, we have started examining for ourselves what savings we can make. I can provide the committee with a list of probably 15 things that we have just stopped immediately, and they do go to things like two temporary staff who will not be replaced. We have three part-time staff against whom we could recruit other part-time staff, but we are not doing that. We have a permanent vacancy that we are not filling until we get some clarity around what the position will be. Senior officers across many agencies have a car park and we have cancelled the lease on one car park effective from 1 July, and so on and so forth. So there would be a list of about 15 things that I could give you that we have immediately said that we are going to stop now. Of course, the budget considerations will come.

Mr BYRNE: Different question entirely. You have talked about need to know versus right to know and the various cultures that exist out there, and each agency based on its own leadership and practice has different cultures. I know full well with my background in military and defence what a culture of 'need to know' generates. One of the weaknesses that has always concerned me is the documentation of decision making in line management where such decisions have potential dramatic implications for individuals. Do you find, when you go to a particular point and information is sought, the documentation or records that support particular decisions? Is that something that has been better managed within agencies these days? From my recent experience it is something that is very much in the ether and it is very hard to find out what the basis of the decision was when people are actually asking.

Ms Kinross: Hopefully I will not unfairly paraphrase the independent FOI panel's report, but my sense of that is that they were quite critical of government's investment in information management in that priority had been given to hardware but not information management. That is part of the reason that report recommended that government develop a strategic information policy and it focus more on information management. I think it would be fair to say—and probably most CEOs would agree—that record management over the last 10 or 15 years has not been a priority. So some of the things that applicants experience come from that sort of thing.

Mr BYRNE: Thank you.

Mr WATTS: Just so I can get my head around how it actually operates, in terms of your access to information and a comparison between the number of staff you have, the information management system that might exist in the agencies and the political culture that might exist surrounding information, which do you see as more important in making your role easier?

Ms Kinross: The leadership, and agency leadership in particular. One of the things I think is quite critical to successful implementation of right to information legislation is a compliance approach by government where the government says to the CEOs, 'We expect you to do this,' and they have a provision in CEO contracts that require them to do it. That is in part what helps deal with the cultural issues in agencies when government makes it a performance issue for agencies. I see that as a really critical element.

Mr WATTS: So ultimately there is no financial restriction to achieving that outcome. As opposed to implementing an information management system or more staff, you can implement a change like that. If it is something that has not existed, you can implement that quite easily.

Ms Kinross: And even an information system can be improved over time. You just have to factor that into your planning and your project design. So every time you have a new IT project or an information management project, if you build in right to information and privacy by design from the start you will gradually improve your systems over time.

Mr WATTS: So a cultural change in the Public Service approach would be the most significant factor from what has happened previously?

Ms Kinross: Yes.

Mr WOODFORTH: Can I ask the other three witnesses the same question that was just asked in terms of your opinion and thoughts.

Mr Ex: I quite agree. In terms of privacy, as with right to information and in the old FOI, there was I think a primary focus on the rules and regulations rather than on the spirit behind the legislation. With privacy there is often the same position in that they are looking at what is the minimum we have to do to comply with privacy obligations rather than what is the aim of privacy legislation, which is to improve the relationship between the deliverer of services—government—and the receiver of services—the community. Like right to information, it is a conversation between those two players which could be improved by a consideration of trying to go with the spirit of it rather than mere compliance.

Ms Mead: I agree with my colleagues. I think there has been a gradual improvement in the attitude from a right to information perspective from agencies, and it takes a long time to embed these types of approaches. As the Information Commissioner said, there has been a patchy response and sometimes that reflects the nature of the agencies, because we deal with external reviews from all sectors—statutory bodies, universities, local governments. Sometimes it reflects their sophistication in terms of the numbers they deal with and their ability to manage their information themselves in a restricted budgetary environment. I think things have been slowly improving, but it certainly requires leadership from the top. The local government sector, for example, has been through a lot of change and their ability to manage all of those things is impacted by that.

Ms Smith: I agree with what my colleagues have said. I think it should be recognised that there have been improvements and there has also been, as mentioned, a gradual change in the culture and improvements in release of information. A number of agencies are looking, when they create information, at how they can administratively release it outside the RTI application. There has been a focus on better decision making so that when you make a decision the reasons are given without having to go behind and look at the documents to check whether they have made that decision on a proper basis. So, again, it is culture as well as better record-keeping systems and it is improving over time.

ACTING CHAIR: Could I perhaps follow up on the theme about the tardiness of some of the agencies. To use a hypothetical case, you have had a complaint and an agency in your view has been tardy and been difficult. What can you do under the current legislation to really put the pressure on that agency to lift their game?

Ms Kinross: We can audit them and write a negative report and provide it to this committee.

ACTING CHAIR: Following on from that then, do you have a view on how legislation perhaps could be amended, varied or changed to give you more teeth to really put some pressure on the agencies that may have a history of tardiness and basically snubbing their nose at what the legislation requires, or is that going too far?

Ms Kinross: I think probably what we would do is look at the issues at a systemic level rather than on the circumstances of individual cases. The fact that a person gets a delayed response from an agency does not necessarily indicate that there are problems with the service delivery in that agency. Sometimes if there are delays it may not be about the will of people to help; it can be about record management. There are agencies which have paper based records in regional offices and it can take four weeks to get records located and collated from various places and sent to head office. So the delays do not necessarily indicate there is a problem with the right to information unit. There can be a whole range of systemic issues. We take a bit of a broader view and there are some measures we keep an eye on.

For example, there is something in the legislation called a deemed decision. If an agency fails to make a decision within the statutory time frame, the applicant can seek a review. The agency is deemed to have refused access and the applicant can seek a review. A few years ago we identified that as a key issue in that there were too many deemed decisions coming to us for review, and it is of intense interest to us because those matters take more of our resources to deal with because you have to go through that whole process of locating the records and going through them and dealing with it as though you were with the agency. We put quite a lot of effort into that particular issue and now we rarely see deemed decisions coming to us for review. It is not often. From where we sit, it is not a particular problem across-the-board. As we go around doing our audits, it is one of the things that we look at in terms of the processing of applications, the timeliness and whether or not we are meeting their statutory time frames. In the audits that we have done so far, we have not seen that as a generalised issue. It is a real problem in some other jurisdictions, but that particular problem does not seem to be a real systemic problem in Queensland.

ACTING CHAIR: Do you have any views on how the system can be sped up? From some of the earlier witnesses this morning we have heard about the way the Ombudsman in particular has sped up some processes. Is there any view that you have? If you are dealing with complainants who have had a problem and they come to you, is there any way of short circuiting, cutting the red tape, cutting the bureaucracy and all of the involvement?

Ms Kinross: Yes. For us that is a work in progress. It is something we are constantly focused on, and I think in our answers to the questions on notice we gave you a fairly comprehensive view around what our strategies are in relation to that.

But our culture is very performance oriented. We do not roll over. We do not say, 'We've done enough now. There's nothing more we can do.' We are continually looking for ways that we can deliver a quicker and better service to our customers, if you like. Since our answers to questions on notice, for example, we have completed a fairly significant project where we have looked at what we call sufficiency of search matters. That is where applicants come to us and say, 'Look, we have these documents from the agency but we know there are a lot more documents that they have not found.' We call that sufficiency of search matters, for shorthand. We identified those matters as matters that were taking up a longer time than other matters to manage. So we established a process to examine that issue to see whether there were things that we could do to speed up that process in dealing with sufficiency of search. The Right to Information Commissioners have just got a report on that, which they are reviewing, but I expect fairly shortly we will have a range of different things to do around our own processes, where we can quicken our processes and make sure that people get an answer to their questions sooner than they currently are.

There are other things. We have suggested to the department things that might help us. For example, when we made the first declaration of a vexatious applicant, we realised that we cannot publish the name of the vexatious person because of the way the legislation works. There is a provision in the legislation that authorises us to publish decisions on our website. So decisions get published with people's names, but the same provisions do not apply to declarations of vexatious people. In making that declaration, I consulted with the Privacy Commissioner, who said 'If you publish that person's name you may well have a technical breach of the privacy principles.' As model people, we cannot afford to be accused of that. So we have not published that name. But clearly, the intent is that we would be able to publish that name. It is ludicrous that we cannot. That is something that we have raised with the department to help us, because if we can publish that name all the agencies that deal with that person will know what the restrictions are on that person in terms of making right to information applications. So we are constantly looking for different ideas and we will continue to do that.

Miss BARTON: I have a question with regard to the declaration of a vexatious applicant. I am wondering what your personal viewpoint is on whether that should remain a subjective test or whether there should be a clear marker and then, in certain circumstances where continued applications may be wanted, a person could make an application to not be considered a vexatious applicant. You said that

one per cent of applicants are responsible for 25 per cent of your applications. I wonder whether we are going to see more people declared vexatious applicants and whether it is worth having a clear delineation of what is considered vexatious as opposed to a somewhat subjective test that might change from commissioner to commissioner once someone's term has expired. I wondered what your views were on that.

Ms Kinross: What I would say is that it is an objective test and it is about applying the provision in the statute, which is fairly prescriptive. So I do not think there will be inconsistencies in the way that provision is applied. In part what you raised is the challenges of how much you prescribe in legislation and how much you set down by principle. There is always a danger, when you become too prescriptive, that you catch people up that perhaps should not be or you do not catch other people up who should be. I am thinking about—I called them frequent flyers—our 10 people. Not all of those people I would declare vexatious.

ACTING CHAIR: In your answers to questions you spoke about the promotion within the community and within the government about your role. Can I congratulate you on writing to all members of parliament after the last election informing us of the work you do and having a contact phone number. I think it is very important, not just for the elected members but also their support staff who work in their offices all the time that they are aware of your existence and the role and the work that your service provides. I think that is the first time I can recall receiving a letter in the years that I have been a member. It certainly just reminds us of what you can do and how you can help.

Ms Kinross: Thanks.

Mr BYRNE: I have a question about government owned corporations. The Ombudsman suggested that it is an area outside of his domain. Do you have a capacity to access government owned corporations for information decisions and so on?

Ms Kinross: By and large, government owned corporations are covered by the legislation.

Mr BYRNE: They are?

Ms Kinross: However, there are restrictions. It does not cover the commercial activities of government owned corporations. So in our experience, effectively, they are not covered.

Mr BYRNE: Right.

Mr WATTS: Just to clarify that, do you feel that sometimes confidentiality clauses, where they are dealing with external businesses, are being used so that you do not have access to information, or is it just part of the normal business process that they are going through?

Ms Kinross: Yes, I think most of the government owned corporations are set up because there are commercial activities that are better managed through that kind of structure. By and large their activities are commercial activities. So legitimately those things fall outside the legislation. For example, under the legislation if something would adversely affect the commercial interests or the business of affairs of an entity, that information may be considered as adverse to the public interest to release it. So the fact that the commercial activities of government owned corporations are effectively outside the legislation in some respects is merely a shorthand way of applying to them the exemption that is already there for other entities with respect to business affairs and commercial activities. Did I answer your question?

Mr WATTS: Yes. My concern is more the intent of those agencies. Are people using it to hide?

Ms Kinross: Nothing comes into my mind to suggest that they are, no.

ACTING CHAIR: In relation to the cost of the public awareness surveys, you talk about having greater training activities in some of the regions. I suppose we are looking at trying to make the dollars go as far as possible. I would be keen to see how surveys can be cut down, if that is possible, and really put that money into training—making sure that the staff at the coalface who are receiving these applications really understand some of the issues that the acting Privacy Commissioner touched on about the spirit of the legislation. Sometimes I think we get carried away with, 'This is the minimum that we have to do.' Do you have a view on the issue about the costs?

Ms Kinross: I do have a view.

Mr ACTING SPEAKER: Please share it with us.

Ms Kinross: What we have done since the government has indicated that all agencies are to tighten their belt is we negotiated our way out of a contract to conduct a survey. It is one of those dozen or 20 things that we have done to tighten our belt. So, yes, I understand your concern and we have taken action around that.

Could I indicate generally that our whole regulatory framework is about influencing government. It is not so much about having teeth and making people do things; it is about influencing things. Part of what we do is try to develop tools and resources that will have that influence. A couple of the things that we have done, which I think are not only seminal but quite important in terms of getting the messages into the heads of the CEOs, are these things. One has been our research around the media. Essentially, what that research has shown is that government agencies who try to protect themselves against adverse comment in the media by not releasing information always get criticised more for being secret. So that is a key message for CEOs. If something is going to come out, or it is out, there is no point in trying to not fully

disclose the facts, because you are going to be doubly criticised and it is better to be criticised once, not twice. So part of the surveys—and I will say a bit more about this—is about coming up with those key messages that are going to get into the heads of the public sector leaders to change the culture.

Another critical piece of information that has come out of that survey—in particular the one that you mentioned—is that four out of five Queenslanders think that they have an unfettered right to government information. So when government agencies say to people, ‘No, you can’t have that’ they need to understand that four out of five of their customers believe that they have an unfettered right to it. That raises important implications for the way agencies manage expectations. It is a really important message for CEOs. I was thinking about this this morning, with all of the announcements about Fairfax and news media about slashing their staff numbers because the digital age is transforming their business model. The digital age is transforming the government business model in the same way. Fairfax was told 10 years ago, ‘You need to reform your business model.’ What we are about is telling the government, ‘You need to reform your business model.’ That is part of the importance of that information. It is about saying, ‘Four out of five of your people have moved into this age of information where they want information, they want it now, they want it online and they don’t want you, the government, getting in the way of them getting it. Get out of the way, government.’ That is what the survey is saying. When you combine that with the digitisation and the expectations of the community of how the government is going to deliver their services, these are really important things for CEOs to know. Who is telling CEOs that? So part of my role is to influence their thinking and to say, ‘You can stay behind the curve and not reform your business models and your service delivery or you can take on board this information and think about what it is you need to do.’

For a survey that is one-off—and as I indicated in my answers to questions on notice it would be meaningless to run those surveys every year or every two years; you might think about running it in 10 years time just to make sure that things are still the same, but the fact that we already know that four out of five have a belief in unfettered access to information is not going to go down in five to 10 years.

Mr WATTS: Sorry, is that a belief or a desire?

Ms Kinross: No, it is what they think.

Mr WATTS: They think.

Ms Kinross: It is what they think. Nine out of 10 of them think that they can have unfettered access to their own personal information, which is a little bit more consistent with the reality. It is just really important for the public sector to be aware that big changes are happening in the community around that.

Mr WATTS: From your department’s point of view—you spoke earlier about audits and adjusting that culture—what are you doing or what would you suggest is done to bring about that shift so that they understand what you are saying and start to take action against it?

Ms Kinross: I will just give you an example, because you will see the report shortly and I will not name the agency again. The agency that you will receive a report on shortly has had a very good approach to the implementation of right to information. It has been working to get quite a bit of its information holdings published online. But when we had a look at it across the agency, it is patchy. You will get one manager who is really switched on and who understands what is happening in the community and they will be working within their own area to publish their information, put things online and change their service delivery and other areas of the agency are not so switched on. So when we come in and audit, it is a bit of a report to the CEO as well to say, ‘Look, you are doing really well in these areas. These areas you need to pay some attention to,’ or, ‘These are the sorts of things that these areas of your agency could be doing.’ So that is one of the ways that we try to influence.

Mr WATTS: I have just a further question about the audit report. That report is between you and basically the CEO and the senior management of the agency. Does that report land anywhere else?

Ms Kinross: Our statutory provisions are different from the Ombudsman’s provision. Our legislation requires us to table any audit report, any compliance report, or any review report that we undertake and to provide the committee with a copy of the reports, yes.

Mr ACTING SPEAKER: Thank you. Commissioners, hopefully as a result of your addresses to our committee those CEOs and people in position of influence might sit up and take note. Can I say on behalf of the committee thank you all for taking the time to spend with us this morning. Your attendance has certainly been appreciated. The committee secretariat will in due course provide you with a copy of the draft transcript once it is available for you to make any corrections, if necessary. If committee members have nothing further to say, I just say again, thank you for spending time with us this morning and we look forward to hearing further addresses from you in the future. The meeting is now closed.

The committee adjourned at 11.47 am.