

Oversight of the Office of the Information Commissioner

Report No. 74

Legal Affairs and Community Safety Committee

September 2014

Legal Affairs and Community Safety Committee

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Deputy Chair	Mr Peter Wellington MP, Member for Nicklin
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Acknowledgements

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Abbreviations

Annual Report	Office of the Information Commissioner's 2012-13 Annual Report
Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Committee	Legal Affairs and Community Safety Committee
Committee Report No. 35	Legal Affairs and Community Safety Committee Report No. 35, ' <i>Oversight of the Office of the Information Commissioner</i> ', for the previous reporting period, 2011-12
Department	Department of Justice and Attorney-General
IP Act	<i>Information Privacy Act 2009</i>
OIC	Office of the Information Commissioner
RTI Act	<i>Right to Information Act 2009</i>

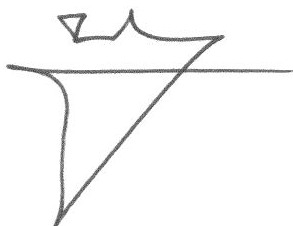
Chair's foreword

The Legal Affairs and Community Safety Committee (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 Rachael Rangihaeata, the Right to Information Commissioner, Ms Jenny Mead and the Acting Privacy Commissioner, Ms Clare Smith on Wednesday, 21 May 2014. The Committee also reviewed the Office of the Information Commissioner's Annual Report for 2012-2013 which was tabled in the Legislative Assembly on 24 September 2013.

On behalf of the Committee, I thank the officers and staff of the Office of the Information Commissioner who assisted the Committee in conducting this oversight inquiry.

I commend this Report to the House.

A handwritten signature in black ink, appearing to read 'Ian Berry', written over a horizontal line. The signature is stylized and includes a small crown-like flourish above the 'B'.

Ian Berry MP

Chair

Recommendations

Recommendation 1

3

The Committee recommends the Attorney-General and Minister for Justice update the Legislative Assembly on the status of the current vacant position of Privacy Commissioner and finalise the outstanding recruitment and selection processes as soon as possible.

Recommendation 2

5

The Committee recommends the Attorney-General and Minister for Justice confirm whether the Government intends to conduct the strategic review of the Office of the Information Commissioner under the *Right to Information Act 2009* and if so, when it will commence and when a reviewer will be appointed.

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:

- Justice and Attorney-General;
- Police Service; and
- Fire and Emergency Services.

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 under the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act) whose functions include promoting access to government-held information and protecting people's personal information held by the public sector.²

In addition:

The services OIC provide include promoting information rights and responsibilities, fostering improvements in the quality of RTI and IP practice in agencies, conducting external reviews of agency decisions about access to information and resolving privacy complaints through mediation.

Also, OIC is responsible for monitoring and reporting to the Queensland Parliament on the performance of public sector agencies in complying with the RTI and IP Act requirements.³

On its website, the OIC presents details of its role, stating it:

...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.⁴

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

² Office of the Information Commissioner, *Annual Report 2012-13*, page ii.

³ Office of the Information Commissioner, *Annual Report 2012-13*, page ii.

⁴ Office of the Information Commissioner, <http://www.oic.qld.gov.au/about>, accessed 28 August 2014.

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, the commissioner's functions or the performance of the commissioner's 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

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

Since the Committee's last report, the Committee is pleased to note the following appointments at the Office of the Information Commissioner:

- Ms Rachael Rangihaeata appointed to the role of Information Commissioner on 20 September 2013; and
- Ms Jenny Mead and Ms Clare Smith, reappointed as (part-time) Right to Information Commissioners;

The Committee notes the permanent role of Privacy Commissioner has been vacant since December 2011 and continues to be filled by staff at the OIC on a temporary basis. In response to a letter from the Committee on 23 August 2103 relating to the filling of vacant positions generally, the Attorney-General advised in relation to the Privacy Commissioner:

...I am considering a way forward with regards to the recruitment and selection process. I will consult with you further on this process, in accordance with Information Privacy Act 2009, in due course.⁷

Shortly afterwards, the Government response to the Committee's recommendations in Committee Report No. 35, *Oversight of the Office of the Information Commissioner*, for the previous reporting period of 2011-12 (Committee Report No. 35), provided further comment:

The Privacy Commissioner appointment is subject to discussions with the Office of the Information Commissioner. The Government will keep the Committee informed.⁸

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 process of selection for appointment, where a person is re-appointed as Information Commissioner, Right to Information Commissioner or Privacy Commissioner.

⁷ Letter from the Attorney-General and Minister for Justice, 1 November 2013, page 1.

The permanent position remains vacant. The Committee reiterates its commentary from Report No. 35 that it has no concerns about the skill level and ability of the persons temporarily acting in the role of Privacy Commissioner however considers that for the purposes of certainty and direction within the OIC, it would be preferable for the vacant statutory position of Privacy Commissioner to be filled on a permanent basis as soon as possible. As a considerable period of time has now passed since the Attorney-General's previous advice to the Committee, a further update on filling this important statu

Recommendation 1

The Committee recommends the Attorney-General and Minister for Justice update the Legislative Assembly on the status of the current vacant position of Privacy Commissioner and finalise the outstanding recruitment and selection processes as soon as possible.

Strategic Review of the Office of the Information Commissioner

Under the RTI Act, a strategic review of the OIC must be conducted within four years after the commencement of the relevant section of the RTI Act,⁹ followed by further strategic reviews at least every five years.¹⁰ The relevant section of the RTI Act commenced 1 July 2009, meaning the initial strategic review was required to be conducted by 1 July 2013.

In the Annual Report, Acting Information Commissioner, Ms Clare Smith, foreshadowed that 2013-14 would bring changes to the RTI and IP Acts and '*...perhaps to the OIC's functions with a legislative review of the RTI and IP Acts and a strategic review of its functions and performance, also required under the RTI Act*'.¹¹

In relation to the required independent strategic review of the OIC, the Annual Report stated:

*The terms of the strategic review are to be decided by the Governor in Council. Before a reviewer is appointed, the Minister must consult with the Parliamentary committee and the Information Commissioner about the appointment of the reviewer and the terms of reference for the review. The strategic review is to include a review of the commissioner's functions and performance of those functions to assess whether they are being performed economically, effectively and efficiently. A strategic review is yet to be conducted.*¹²

As noted in Committee Report No. 35, the Committee will have additional involvement at the end of the process, as once the report on the strategic review is tabled in the Legislative Assembly, it is referred to the Committee for examination.¹³

Committee Report No. 35 included commentary on the state of the strategic review as at the end of the previous reporting period.

⁸ Government response to recommendations of the Legal Affairs and Community Safety Committee Report No. 35, Oversight of the Office of the Information Commissioner, tabled 9 August 2013, tabled 8 November 2013, page 1.

⁹ Right to Information Act 2009, section 186(2).

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

¹¹ Office of the Information Commissioner, Annual Report 2012-13, page 5.

¹² Office of the Information Commissioner, Annual Report 2012-13, page 12; Right to Information Act 2009, section 186(5), (6), (7) and (9).

¹³ Right to Information Act 2009, section 188(7) and section 189(e).

The relevant passages of Committee Report No. 35 are reproduced below,¹⁴ including footnotes:

Both the Committee and the OIC have had the opportunity to comment on the draft Terms of Reference for the strategic review, circulated in January 2013 by the Department.¹⁵ The OIC considered that it was adequately consulted and agreed the terms of reference appeared 'comprehensive and appropriate'.¹⁶ Similarly, the Committee also considered the draft Terms of Reference were appropriate and provided no further specific comments to the Attorney-General.¹⁷ Some operational issues identified by the OIC associated with the impending strategic review are discussed later in this Report.

The OIC has stated it anticipates the strategic review will begin in the new financial year.¹⁸ At the time of writing this report, the 2011-2012 financial year has almost ended, and the Committee has not yet been consulted about the appointment of the reviewer.¹⁹ It appears therefore, that the strategic review will not be conducted within the required period of four years.

Given the status at the end of the previous reporting period, the Committee recommended the Attorney General confirm the current status of the strategic review of the OIC under the RTI Act and the reasons for the delay on the appointment of a reviewer.

Whilst acknowledging the RTI Act requires a strategic review of the OIC, the Government response to the Committee's recommendations advised:

...the Government is currently undertaking an Open Government reform process, which will holistically examine the operation of the State's integrity agencies (including the OIC) and integrity framework. The Government is committed to crafting a new integrity system for Queensland as we move towards making the government the most open and accountable in the nation.

To avoid duplicating the work of the Open Government reform process, the Government has deferred commencing the first strategic review of the OIC. Further announcements on this matter will be made in due course.²⁰

The Committee accepts the Government is undertaking further work in this area, but notes there is a statutory requirement in the RTI Act for a strategic review of the OIC to occur, which is now well overdue.

As a considerable amount of time has now passed since receiving the Government's response to the Committee's previous recommendations without further update, the Committee considers a further update on the status of the strategic review is required.

¹⁴ Legal Affairs and Community Safety Committee, *Oversight of the Office of the Information Commissioner*, Report No. 35, August 2013, page 3.

¹⁵ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, pages 20-21; Letter to the Legal Affairs and Community Safety Committee from the Attorney-General and Minister for Justice, 9 January 2013.

¹⁶ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, page 20.

¹⁷ Letter to the Attorney-General and Minister for Justice, 25 January 2013.

¹⁸ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, page 21.

¹⁹ *Right to Information Act 2009*, section 186(7).

²⁰ *Government response to recommendations of the Legal Affairs and Community Safety Committee Report No. 35, Oversight of the Office of the Information Commissioner*, tabled 8 November 2013, page 1.

Recommendation 2

The Committee recommends the Attorney-General and Minister for Justice confirm whether the Government intends to conduct the strategic review of the Office of the Information Commissioner under the *Right to Information Act 2009* and if so, when it will commence and when a reviewer will be appointed.

1.4 Legislative reviews

In addition to the strategic review of the OIC detailed in section 1.3 of this report, the responsible Minister must start reviews of the RTI Act and IP Act, no later than two years after the commencement of the relevant sections of those Acts.²¹

The RTI Act and IP Act substantively commenced on 1 July 2009, meaning the reviews were required to start no later than 1 July 2011. The Attorney-General wrote to the Committee on 1 October 2013, noting initial work commenced by the necessary date.²²

The objects of the reviews, as set out in the Acts, 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.²³
- Upon completion of these reviews, reports relating to their outcome must be tabled in the Legislative Assembly, as soon as practicable.²⁴

In his letter of 1 October 2013, the Attorney-General advised the Committee:

*On 5 August 2013, I released two discussion papers as part of the review. One of these papers considers the RTI Act and the access and amendment provisions of the IP Act. The other considers the IP Act's privacy provisions. The papers aim to identify the key issues and challenges raised in the legislation.*²⁵

The discussion papers were released to the public and the closing date for submissions was 15 November 2013.²⁶

The OIC wrote to the Committee on 15 November 2013, attaching copies of its submissions to the reviews.²⁷ In its 1 May 2014 response to the Committee's Questions on Notice, the OIC commented on its submissions, noting a number of mechanisms it had identified to assist in managing demand for its services:

...including broadening the power to remit certain external reviews to agencies for decision, reinstating internal review and the threshold for consultation with third parties. Such

²¹ *Right to Information Act 2009*, section 183(1); *Information Privacy Act 2009*, section 192(1).

²² Letter from the Attorney-General and Minister for Justice, 1 October 2013, page 1.

²³ *Right to Information Act 2009*, section 183; *Information Privacy Act 2009*, section 192.

²⁴ *Right to Information Act 2009*, section 183(3); *Information Privacy Act 2009*, section 192(3).

²⁵ Letter from the Attorney-General and Minister for Justice, 1 October 2013, page 1.

²⁶ Letter from the Attorney-General and Minister for Justice, 1 October 2013, page 2.

²⁷ Letter from Ms Rachael Rangihaeata, Information Commissioner, 15 November 2013, page 1.

*changes may contribute to reducing demand and the more efficient and effective use of government resources.*²⁸

In her opening statement to the Committee at the public hearing on 21 May 2014, Ms Rangihaeata, Information Commissioner, identified the following initiatives for government consideration included as part of the OIC's submissions to the legislative reviews:

*We recommended key issues for consideration in the review, including consolidating access applications under a single Act; changes to provide greater support to the push model, including strengthening publication scheme and administrative access requirements; mechanisms to manage demand for external review, including broadening the ability to remit external reviews back to the agency; streamlining legislative processes; and increasing certainty and consistency.*²⁹

Ms Rangihaeata contended such changes would increase certainty and reduce red tape for both agencies and the community and help prevent inefficient use of agency and OIC resources:

*As we work towards effective agency implementation of the right to information and information privacy framework, promotion of proactive and administrative release of information all deter unnecessary use of the formal access application process and improve the quality of decision making to ensure that demand for external review is minimised. Together with the refinements of the legislation to improve the efficiency and effectiveness of the legislative framework, the demand for external review is more likely to reach a sustainable level.*³⁰

In its response to the Committee's Questions on Notice, the OIC foreshadowed the anticipated impact of the legislative reviews on its workload: *'If legislative changes resulting from this review were made in 2014-15, it is likely to result in significant work for the OIC to review training, information resources and knowledge management systems to reflect such changes'*.³¹

The Government's response to Committee Report No 35, tabled on 8 November 2013, provides:

The consultation period closes on 15 November 2013, allowing a significant period for public input. The Government is committed to obtaining a wide cross section of views on the issues raised. The review presents a unique opportunity for Queenslanders to have their say about how we can further the objectives of the RTI Act and the IP Act and improve their operation for the greatest public benefit.

*The RTI Act and the IP Act require a report to be tabled as soon as practicable after the review is finalised.*³²

The Committee awaits the outcome of the Government's statutory review of the legislation in due course.

²⁸ Office of the Information Commissioner, Answers to Questions on Notice, May 2014, page 17.

²⁹ *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 21 May 2014, page 3.

³⁰ *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 21 May 2014, page 3.

³¹ Office of the Information Commissioner, Answers to Questions on Notice, May 2014, page 17.

³² *Government response to recommendations of the Legal Affairs and Community Safety Committee Report No. 35*, Oversight of the Office of the Information Commissioner, tabled 8 November 2013, page 2.

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 process it adopted previously.

That 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 21 March 2014, the Committee provided Questions on Notice to the Information Commissioner.

On 1 May 2014, the Committee received the Information Commissioner's response to its Questions on Notice. It is attached at **Appendix A**.

On 21 May 2014, the Committee held a public hearing with the Information Commissioner to discuss the responses to the Questions on Notice, the Commissioner's functions and performance under the RTI Act and IP Act and the *OIC Annual Report 2012-2013*.

In attendance with the Information Commissioner were:

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

A copy of the transcript of the public hearing is also available on the Committee's website.³³

³³ www.parliament.qld.gov.au/work-of-committees/committees/LACSC

3. Committee Consideration

The Committee is pleased with the performance of the OIC during the reporting period, and acknowledges the efforts of Ms Julie Kinross, in her capacity as Information Commissioner until 9 August 2012, and Ms Jenny Mead and Ms Clare Smith, in their successive roles as Acting Information Commissioner.

The Committee acknowledges the words of Ms Clare Smith in the Annual Report, advising the '*...OIC has continued to meet all its performance targets and in many cases we exceeded them*'.³⁴

As expressed in Committee Report No. 35, it is the Committee's view that it is timely for a strategic review of the OIC to take place, to ensure the Commissioner's functions, and performance of those functions, continue to meet the RTI Act's objectives and needs of stakeholders. The Committee anticipates the review with great interest.

The Committee is pleased to note the Annual Report indicates a substantial improvement over the reporting period in relation to the OIC's timeliness of external reviews, from a median of 90 days to 59 days.³⁵ In its response to the Committee's Questions on Notice, the OIC stated it continues to focus on achieving early resolution of reviews where possible, and, despite not expecting further improvement on the median days outcome in the current year, noted: '*...as at 31 March 2014 OIC had only 13% of files on hand that were older than 6 months and it is anticipated no files will be over 12 months old at 30 June 2014*'.³⁶

From the beginning, the OIC has been actively involved in the Open Data scheme, introduced by the Queensland Government in 2012-13. The Committee observes the OIC's involvement is of note in relation to the area of privacy.³⁷ The scheme aspires to proactively release data in open and reusable formats and is considered as a significant initiative that releases valuable government data to business and the community.³⁸

In the Committee's public hearing, Ms Smith spoke of the importance of the Open Data scheme in making government information available and assessable for use by the community, researchers and private businesses, whilst noting related privacy risks:

*These risks can be managed and minimised. ...government data will be released unless it is restricted for reasons of privacy, public safety, security, commercial confidentiality or compliance with the law... It is expected that inadvertent breaches may arise, but it is how the agency corrects and manages that breach that is also important.*³⁹

The Committee supports the Open Data scheme, including the proactive release of information, and continues to support the OIC's approach and participation in the initiative.

Further, the Committee acknowledges the 2013 self-assessment electronic audit conducted by the OIC, which culminated in a report in September 2013. Ms Rangihaeata identified the audit as:

...an important piece of work that has provided us with a good insight into how the Queensland public sector, including universities, local governments and statutory authorities, are performing their right to information and information privacy obligations as we approach

³⁴ Office of the Information Commissioner, *Annual Report 2012-13*, page 6.

³⁵ Office of the Information Commissioner, *Annual Report 2012-13*, pages iii and 22.

³⁶ Office of the Information Commissioner, *Answers to Questions on Notice*, May 2014, page 1.

³⁷ Office of the Information Commissioner, *Annual Report 2012-13*, page 5.

³⁸ Office of the Information Commissioner, *Annual Report 2012-13*, page 5.

³⁹ *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 21 May 2014, page 5.

five years since the commencement of the right to information and information privacy legislation.⁴⁰

The Committee reiterates its concerns regarding the high number of privacy complaints rejected by the OIC due to non-compliance by the applicant. Details of statistics for this reporting period are detailed below. However, the Committee acknowledges the ongoing efforts of the OIC to address this issue:

The privacy principles allow a large degree of flexibility of information flow for legitimate business reasons. The privacy principles in the Information Privacy Act 2009 are technical in nature and do not always align with a lay person's understanding of the term 'privacy'. Consequently, some complaints concern actions which are not breaches of the Act. OIC declines to deal with these complaints on the basis that the complaint is unsupported in law.

To assist in remedying this deficiency OIC has, among other measures, further re-designed its online form to assist complainants in understanding their privacy rights. OIC produced a plain English publication on the 10 most common 'privacy myths'. OIC has also started to produce short animated features as a means of visually publicising the privacy message.

Also, OIC has initiated the quarterly convening of Privacy Contact Officers as part of the Right to Information and Information Privacy Practitioner Forum as another mechanism for disseminating and sharing privacy resources.⁴¹

Additionally, the Committee acknowledges and supports the OIC's efforts in the area of privacy obligations in complaints management:

This financial year, the office focused on the area of privacy obligations in complaints management, launching in March 2014 a free online training course on how to deal with a privacy complaint. Also that month, this office tabled its review of privacy and complaints handling systems, identifying good practices that other agencies might care to adapt and adopt. This office has also sought to promote to senior management in agencies a common-sense approach to managing privacy complaints, with a view to resolving privacy complaints at the agency level.⁴²

The Committee notes its concern conveyed in Committee Report No. 35, relating to the wide ranging impact of recommendation 10 of the Independent Advisory Panel into the Review of the Crime and Misconduct Act and Related Matters.⁴³ Ms Rangihaeata updated the Committee on this issue at the public hearing:

With the Callinan-Aroney recommendations that have been implemented, there are some changes to the operation of the [then] CMC exemption under the Right to Information Act so we are ensuring that internally we are ready to apply the change in legislation and also in our external review function and provide advice for our information and assistance service. That includes providing guidance and training and making agencies aware of the change in that operation of the provision there. It is relatively minimal, recommendation 10, which was discussed at the last meeting, was not reflected in legislation. It really is just the change in the exemption for decision making.⁴⁴

⁴⁰ *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 21 May 2014, page 1.

⁴¹ Office of the Information Commissioner, *Annual Report 2012-13*, page 26.

⁴² *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 21 May 2014, page 5.

⁴³ Legal Affairs and Community Safety Committee, *Oversight of the Office of the Information Commissioner*, Report No. 35, August 2013, pages 7-10.

⁴⁴ *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 21 May 2014, page 11.

3.1 Performance

In relation to the performance of the OIC for 2012-2013, the Committee notes:

- There was an increase in the demand for external review, in a context where prior demand was already considered high. In 2012-2013, the OIC received a record 533 external review applications, compared to 404 in 2011-2012.⁴⁵
- The number of external review file closures by the OIC remained stable. A total of 458 applications were closed by the OIC in 2012-2013, which is one more than last year's new record of 457 closures.⁴⁶
- There has been a decrease in the number of privacy complaints. In 2012-2013, the OIC received 51 complaints, as opposed to 61 last year.⁴⁷
- The number of privacy complaints which were not technically compliant remains high. In 2012-2013, 62% of complaints were not accepted. In 2011-12 that figure was significantly lower at 32%, however was significantly higher in 2010-2011 at almost 80%.⁴⁸ The largest single reason for non-acceptance (33% of complaints received) is that the complainant either failed to lodge their complaint with the relevant government agency first and/or failed to allow the agency the required time of 45 business days to deal with the complaint.⁴⁹

3.2 Future challenges

The OIC identified it would face the following challenges over the next 12 months, from May 2014:

- responding to expected changes flowing from the reviews of the RTI Act and IP Act;
- maintaining timeliness in the external review service, without access to additional funds to employ temporary external review staff, and in a context where demand for the service has increased; and
- supporting agencies to meet right to information and information privacy obligations and apply good practices in implementing initiatives such as outsourcing, open data, the 'one stop shop' portal and increased information sharing.⁵⁰

The Committee notes the OIC's expectation that refinements in the legislation, flowing from the legislative reviews, will assist with ensuring levels of demand for external review reach a more sustainable level.⁵¹

In the Committee's public hearing, Ms Rangihaeata advised:

While we will not have the temporary external review resources in 2014-15 that were accessed to meet the unfunded additional demands since the commencement of legislation, we are continuing to work to manage review demand through improving quality of agency practices which encourage agencies and the community to use the formal access application process only as a last resort, as intended by the legislation. In particular, we are encouraging better service delivery to the community through self-service online access to information and assisted client service through administrative release or established schemes to access information. We are fortunate with the benefit of the maturity of a well

⁴⁵ Office of the Information Commissioner, *Annual Report 2012-13*, pages iii and 18.

⁴⁶ Office of the Information Commissioner, *Annual Report 2012-13*, pages iii and 19.

⁴⁷ Office of the Information Commissioner, *Annual Report 2012-13*, pages iii and 26.

⁴⁸ Office of the Information Commissioner, *Annual Report 2012-13*, pages iii and 27; Legal Affairs and Community Safety Committee, *Oversight of the Office of the Information Commissioner*, Report No. 35, August 2013, page 7.

⁴⁹ Office of the Information Commissioner, *Annual Report 2012-13*, page 26.

⁵⁰ Office of the Information Commissioner, *Answers to Questions on Notice*, May 2014, pages 16-17.

⁵¹ *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 21 May 2014, page 3.

*established independent merits review process under a solid legislative framework to have refined our practices and our knowledge management tools over the past 22 years, particularly so in the past few years. The fact that the office has managed to meet the significant demand from 2012-13 and close 40 more applications than received this year is testament to those efficiency improvements and the professionalism and dedication of our staff.*⁵²

The Committee is concerned about the OIC's ability to efficiently respond to increased numbers of external review applications, however notes the efforts of the OIC to maintain its high standards and the expectation that the legislative reviews of the RTI Act and IP Act will assist in this area.

The Committee considers that the recommendations in this report will provide some assistance in this regard.

The Committee also takes this opportunity to express its continued support of the OIC in promoting government accountability, openness and transparency.

⁵² *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 21 May 2014, page 3.

Appendix A

Written Responses to Questions on Notice

1 May 2014

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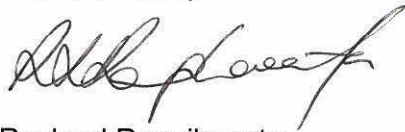
Dear Mr Berry

Oversight Meeting with the Office of the Information Commissioner

Please find attached responses to the Questions on Notice from the Committee received on 21 March 2014.

I look forward to meeting with the Committee on 21 May 2014.

Yours sincerely



Rachael Rangihaeata
Information Commissioner

OVERSIGHT MEETING WITH THE OFFICE OF THE INFORMATION COMMISSIONER

May 2014

WRITTEN RESPONSES TO QUESTIONS ON NOTICE

Highlights of 2012-13

1. **Page iii of the Annual Report indicates that over the reporting period the OIC improved timeliness of external reviews from a median of 90 days to 59 – a very substantial improvement. Would you please advise how this was achieved and whether you would anticipate that an even further improvement might be made this year?**

OIC continues to focus on achieving early resolution of reviews where possible. If matters are able to be resolved early and without the need for a more formal process, then timeliness is greatly improved. Such outcomes depend on the willingness and capacity of the parties to engage in such a process and the nature of the review. To a certain extent this is outside the control of OIC.

Factors that impact on timeliness include the:

- volume of documents to be considered;
- delays in responses by agencies and parties;
- attitude of parties;
- complexity of the issues; and
- involvement of and number of third parties in the external review.

It is not anticipated that there will be any improvement on the median days outcome in the current year. A large number of related applications this year have involved corporate applicants requiring consideration of a large volume of documents regarding significant infrastructure projects or proposals. Whilst very few of these matters have resulted in decisions, they do take several months to resolve. Timeliness also continues to be affected by delays in responses from applicants, agencies and third parties to OIC requests.

However, as at 31 March 2014 OIC had only 13% of files on hand that were older than 6 months and it is anticipated no files will be over 12 months old at 30 June 2014.

Performance report card

2. **Page 3 of the Annual Report reports that the OIC achieved a rate of 97% as regards agency satisfaction with the review service provided, as against a target of 75%. Has there been any analysis as to how this result was achieved? Are you able to give details of the types of matters which made up the reported 3% of dissatisfaction with the review services? Have any steps been taken to address the issues complained about?**

OIC reviews agency survey results to identify any systemic issues that need to be addressed. With such a low dissatisfaction rate the issues raised have not been significant. One issue raised related to the timeframe for the provision of initial documents by agencies. OIC has been flexible where agencies have experienced difficulties in meeting this requirement in individual cases and extended the timeframe for providing documents.

Another comment related to multiple requests from OIC to one agency regarding a number of reviews. OIC has responded by adjusting our processes to ensure that as far as possible this does not occur. Coordination mechanisms have been enhanced to prevent multiple simultaneous demands on one agency, particularly those with limited resources. However, it is noted that such issues can affect timely resolution of reviews.

One agency made a comment about the matters OIC considers when considering review applications made outside the statutory time limit. The response demonstrated that the agency concerned did not understand the requirements of the law in this area and whilst it is solely a matter for OIC to determine, educational information will be disseminated through OIC Practitioner Newsletter and Forums to enhance agency understanding.

A further suggestion related to the manner in which the survey is conducted. OIC agrees with the approach suggested and intends to conduct surveys electronically in 2014-15.

OIC also encourages agencies to provide feedback about the review process throughout the year to enable any concerns to be addressed as soon as possible.

3. It is also noted the number of reviews finalised over the year was a total of 458, as against a target of 300. Can this be attributed to an increase in the dedicated staff in the review unit, or have other factors contributed to this rate?

As noted in previous years, the high level of closures compared to the target can be attributed largely to the use of temporary resources to employ additional temporary staff in External Review to deal with the unfunded increased demand. A record number of 533 applications for external review were received in the 2012–13 year. Continuing high demand would make it difficult to meet the community demand for external review without additional staff.

In recent times a reduction in turnover of both permanent and temporary staff has assisted with efficiency. Improved efficiencies and a continued focus on identifying and seizing opportunities for informal resolution and on timeliness have also contributed to the high closure rate.

4. In 2012-13 the target for percentage of finalised review applications was 100%, yet only 86% were achieved. Would you please expand on this? Are measures in place or being considered to improve efficiencies for the next reporting period?

This target is affected by the number of applications received so despite closing a record number of files (458), OIC also received a record number of review applications (533) in this period.

OIC continues to provide resources and information to the community and agency decision-makers to assist in the understanding and application of the legislation with a view to managing the demand for external review. The provision of advanced negotiation skills training to agency staff contributes to better decision-making at the initial level, leading to a reduction in demand for external review.

Measures to ensure efficient external review processes include effective use of OIC resources to reduce duplication of effort and close supervision of reviews, and high quality knowledge management systems.

5. It is noted that the office dramatically exceeded its target of 90 median days to finalise a privacy complaint, achieving this in just 18 days. In view of this, does the office intend to review this service target?

The target of 90 median days to finalise a privacy complaint was reviewed in 2012-13. The OIC will report against new timeliness standards for privacy complaints for the 2013-14 financial year as set out below:

- *Mean* average days to make a decision whether to accept a privacy complaint (target: 14 days)
- mean average days to finalise *an accepted* privacy complaint (target: 90 days).¹

The new measures will more clearly indicate the timeliness of the OIC in the initial stage of determining whether to accept a complaint, and the process of finalising an accepted complaint.

6. The “performance report card” indicates that 2,983 people received training over the last financial year against a target of 500. This represents a significant increase on the 1,027 people trained in 2011-12. Are you able to advise what contributed to this increase?

The introduction of a suite of online training courses on information rights and obligations has contributed significantly to the increase in people trained in 2012-13. Enrolments have been received from both metropolitan and regional areas. All online courses are offered free of charge and are available to any public servant, agency or member of the community. Feedback to date indicates that agencies favour the option of online training because it is easy to access, offers flexible delivery and is low cost.

As reported in OIC’s 2011-12 Annual Report, the first OIC online course was released in May 2012: Information Privacy Act–general awareness. During the 2012-13 financial year a further three online courses were released, namely:

- Information Privacy for Queensland health agencies
- Right to Information Act–general awareness; and
- Information Obligations for public sector employees.

These online training courses are designed to be of broad relevance to all employees of a Queensland government agency and preferably provided in all induction training and refresher training. A number of agencies have now made the training compulsory for all staff.

The Information Privacy for Queensland health agencies course is designed for employees of health agencies as the content specifically deals with the National Privacy Principles which apply to health agencies.

The Right to Information Act–general awareness course promotes awareness of proactive disclosure and administrative release of government-held information and explains how the access and amendment rights contained in the *Right to Information Act 2009* (Qld) (**RTI Act**) and the *Information Privacy Act 2009* (Qld) (**IP Act**) work.

The Information Obligations for public sector employees course explains the information rules which are generally applicable to all Public Service Employees that require, permit, and prohibit disclosure of information.

¹ State Budget, Service Delivery Statement, 2013-14, page 62.

7. Page 3 of the Annual Report reports that OIC conducted 106 monitoring and compliance activities over the reporting period, against a target of only 10. Are you able to provide general details as to what these activities were?

In 2012-13 OIC:

- conducted an in-depth review of the Department of Education, Training and Employment to determine the agency's compliance with the RTI Act and the IP Act. The subsequent report was finalised and tabled in 2013-14.
- conducted follow-up reviews on the Queensland Police Service and Queensland Health to assess implementation of recommendations made as a result of the compliance review conducted in 2011-12. The subsequent follow-up report was finalised and tabled in 2013-14.
- conducted 96 desktop reviews of government agencies' websites to assess compliance with legislative requirements to push government held information into the public domain and to protect personal information. The subsequent report was finalised and tabled in 2013-14.
- Created an interactive online survey tool to conduct a self-assessment electronic audit of over 200 agencies and subsequently conducted the audit between March and May 2013. Public sector agencies, including departments, local governments, universities, Government Owned Corporations and statutory authorities, assessed and reporting on their implementation of the obligations contained in the RTI Act and IP Act, and related instruments. Completion of the audit by agencies was mandatory and 91% of agencies responded. The report on this audit was tabled in 2013-14.
- Finalised and presented the following review reports for tabling in Parliament:
 - Compliance Review – Department of Transport and Main Roads: Review of the Department of Transport and Main Roads' compliance with the RTI Act and the IP Act
 - Camera surveillance and privacy: Review of camera surveillance use by Queensland government agencies and compliance with the privacy principles in the IP Act; and
 - Results of Desktop Audits 2011-12: Review of Publication Schemes, Disclosure Logs and Information Privacy Awareness in Departments, Local Governments, Statutory Authorities and Universities.

Other activities undertaken to support performance monitoring and reporting activities included:

- an annual risk assessment of agencies was conducted to inform planning of OIC's programme of work relating to monitoring and compliance activities for the upcoming twelve month period.
- a 'How to' webinar was developed and delivered to agency staff across Queensland in relation to OIC's self-assessed electronic audit.
- a briefing practices audit tool was designed and released online to assist agencies to self-assess their compliance with OIC's Model Protocols for Queensland Government departments on reporting to Ministers and senior executive on RTI Act and IP Act applications.

Community engagement

8. **The Committee notes that there was a 19% increase in traffic to the OIC website during the reporting period. Nonetheless, on page 5 of the report the Acting Information Commissioner states “OIC believes that valuable resources on its website including online training programs, information sheets, guidelines, decisions and in particular the annotated legislation are under-utilised.” Is the OIC contemplating taking further measures to enhance the profile of its online resources or otherwise attract more visitors to the website?**

Yes. OIC continues to pursue opportunities to enhance the profile of its online resources in order to attract more visitors to the website and in turn raise awareness of information rights and responsibilities. Many of OIC’s online resources are prepared to address issues raised or trends identified in the course of conducting general business. Raising the profile of these resources through various communication channels, networks and mediums continues to be a priority.

As reported in OIC’s Annual Report 2012-13, a major function for OIC is to provide information and assistance to agencies and members of the public on the interpretation and application of the RTI Act and IP Act. One method to achieve this, other than training, is through online resources. OIC’s online resources are primarily used by agency staff and members of the community to help them understand, apply and use the right to information and information privacy legislation.

Web based technologies, like social media and multi-media, continue to be a valuable tool for enhancing the profile of OIC’s online resources. A dedicated YouTube Channel, Twitter feed and LinkedIn presence has increased communication opportunities and reach to public servants and the community. More recently, the creation and use of animation as well as video has allowed for previously static or flat content to be delivered in a dynamic and highly engaging manner. Dissemination of resources and key messages through web based technologies also allows for a ‘call to action’ to be included. This call to action, for example ‘*More information visit OIC’s website*’ or ‘*Read more here*’, directs the user back to OIC’s website via an embedded hyperlink. Employing this communication strategy has enabled OIC to easily distribute online resources while driving traffic back to the website. It is the combination of web based technologies with a call to action that has contributed to an increase in website visitors.

Furthermore, in May 2013 OIC delivered its first RTI/IP practitioner forum where presenters cover topics on information rights and responsibilities. Whenever possible, presentations are supported by OIC’s online resources and participants are directed to them for additional information or support. These forums are held quarterly in Brisbane and can be attended in person or via teleconference. This alternative option allows for practitioners to participate regardless of their location. Since the initial forum was held attendance numbers have more than doubled to in excess of 80 participants.

With a growing active practitioner network OIC has also introduced a quarterly practitioner e-newsletter. This provides yet another opportunity to promote OIC’s online resources while attracting visitors back to the website.

As mentioned in the response to Question on Notice No. 6, OIC continues to grow its suite of online training. These courses have been designed to offer both general awareness of information rights and responsibilities as well as more detailed application of the RTI Act and IP Act. All current courses are available for anyone to use and access is provided free of charge. Since the first online course was released in May 2012 over 12,000 enrolments have

been recorded to the end of March 2014. Promotion of and access to OIC's online training portal is through OIC's website. The resulting traffic has contributed to visitor numbers.

Other examples of OIC's continuing efforts to enhance the profile of its online resources and attract more visitors to the website include:

- promoting online resources during significant annual events such as Privacy Awareness Week and Right to Information Day
- visiting regional centres and delivering presentations which promote OIC's online resources to agency senior executives, staff and the community where possible
- conducting a regional/rural agency engagement project which will result in approximately 100 agencies being contacted in 2013-14 directly by telephone, offered assistance and informed of OIC's online resources
- writing to agency Chief Executive Officers promoting OIC's online resources including publications such as compliance review reports
- promoting through the Department of Education, Training and Employment and schools OIC's *Protecting Your Online Reputation* teaching module to raise awareness among Queensland senior secondary school students about privacy in the information age
- conducting media interviews (print, television, radio) throughout the State that reference OIC's online resources; and
- disseminating, through established networks, a range of marketing and communication collateral such as brochures, posters, media releases and email subscription services.

Appeals

9. **During 2012-13, seven appeals were made to QCAT. At the time the Annual Report was written, three appeals were pending (page 21). Can you please briefly outline the issue in these cases and advise whether there has been any progress in their finalisation?**

Minogue v Department of Health and Information Commissioner

The applicant applied to the Department of Health (QH) for access to Corporate Office documents about him for a specified period. QH refused access to some of the information on the basis that it was either subject to legal professional privilege or its disclosure would, on balance, be contrary to public interest. QH also excluded certain information from consideration on the basis that it was outside the scope of the access application.

On review, OIC was satisfied that certain information was outside the scope of the access application and that access to the remaining information could be refused as it was either subject to legal professional privilege or its disclosure was contrary to the public interest.

The contrary to public interest information comprised information provided by other staff in relation to their emotions, team morale and incidents involving the applicant and communications between management personnel regarding options and procedures for dealing with staffing issues largely initiated by the applicant or, to a lesser extent, otherwise involving the applicant, arising from the applicant's employment with QH. In relation to this information, OIC considered the factors favouring disclosure were outweighed by the strong public interest in safeguarding the personal information of other individuals and protecting their privacy and in protecting QH's ability to manage its staff and obtain confidential information in future.

The applicant appealed to QCAT. Crown Law (on behalf of QH) has applied to dismiss the appeal and QCAT will determine this issue on the papers.

Sibelco Australia Limited v Department of Natural Resources and Mines and Information Commissioner

The access applicant sought access to information from the Department of Natural Resources and Mines (**Department**) concerning certain leases to mine sand on North Stradbroke Island. The Department consulted with Sibelco Australia Limited (**Sibelco**). Contrary to Sibelco's views, the Department decided to grant full or partial access to information which relates to the renewal of mining leases covering Sibelco's sand mining operations on North Stradbroke Island. On review, OIC decided the information in issue was neither exempt from disclosure, nor would its disclosure, on balance, be contrary to the public interest.

Sibelco appealed to QCAT. At a Directions Hearing held on 7 November 2013, the Department advised QCAT that it would not be filing any submissions and that it would abide the order of the Tribunal. The Department was subsequently granted leave to withdraw from further participation in the appeal.

A Hearing was held on 12 December 2013 and final submissions were filed on behalf of Sibelco and OIC in January 2014. A decision has not yet been issued by QCAT.

Underwood v Department of Housing and Public Works and Information Commissioner

The access applicant sought access to the complete file in relation to a public housing unit which she resided in. The Department of Housing and Public Works (**Department**) granted access to some information and refused access to the balance.

On review, OIC found that documents relating to a different property were outside the scope of the access application, information which was not relevant to the terms of the access application could be deleted and access to information could be refused on the bases that:

- it is subject to legal professional privilege
- disclosing it would, on balance be contrary to the public interest as it comprised other individuals' personal information; or
- it was otherwise publicly available.

The access applicant appealed to QCAT. QCAT has considered a number of procedural matters, some of which were the subject of an appeal to the Court of Appeal. A hearing date has now been set for August 2014.

10. It is noted that two appeals were upheld and the matters remitted to the Information Commissioner to reconsider. Would you please advise the outcome of those?

ASD v Office of the Information Commissioner and Department of Justice and Attorney-General

The access applicant sought access to information held by the Office of Liquor and Gaming Regulation (**OLGR**) about incidents of alcohol-related violence at a number of licensed venues. The Department of Justice and Attorney-General (**Department**), which deals with requests for information from OLGR, contacted owners of the relevant venues including the Third Party to seek their views on disclosing information about their venues. The Department decided to grant access to information contrary to the views of the Third Party. On review, OIC found that disclosure of the information relating to the Third Party's venue would not, on balance, be contrary to the public interest.

The Third Party appealed to QCAT. QCAT found OIC had erred by not considering a public interest factor in favour of non-disclosure in schedule 4, part 3, Item 22 (disclosure prohibited by an Act). QCAT set aside OIC's decision and remitted the matter back to OIC to be decided by a different Commissioner.

OIC considered this matter afresh in accordance with QCAT's decision. OIC decided on 8 November 2013 that disclosing information about the Third Party's venue would not, on balance, be contrary to the public interest. OIC considered that the public interest in disclosing information held by a regulatory agency about incidents in licensed premises outweighed the public interest factors favouring nondisclosure, including the factor identified by QCAT.

The Third Party did not appeal the decision and OIC understands the relevant information has been released by the Department.

ASD v Queensland Police Service; Office of the Information Commissioner and Nine Network Australia

The access applicant sought access to information held by the Queensland Police Service (**QPS**) about 'glassing' incidents which occurred on licensed premises. QPS decided to refuse access to information identifying the relevant licensed premises. On review, OIC consulted with six venues, including the Third Party. OIC found that QPS was not entitled to refuse access to the street address and name of the venues (where included in the information), including the Third Party, as it was neither exempt from disclosure nor would its disclosure, on balance, be contrary to the public interest.

The Third Party appealed to QCAT. QCAT found that OIC had erred by not considering the public interest factor in favour of non-disclosure in schedule 4, part 3, Item 22 (disclosure prohibited by an Act). QCAT set aside OIC's decision and remitted the matter back to OIC to be decided by a different Commissioner.

OIC considered this matter afresh in accordance with QCAT's decision. OIC decided on 5 December 2013 that information identifying the Third Party's venue:

- was not exempt; and

- would not, on balance, be contrary to the public interest.

In relation to the public interest test, OIC considered that disclosing information which identified venues at which glassing incidents had occurred would enhance government's accountability by enabling scrutiny of reforms designed to target such offences. OIC considered this outweighed the public interest factors favouring nondisclosure, including the factor identified by QCAT.

The period for appeal of that decision has expired and no appeal has been lodged.

Review of decisions

- 11. Page 18 of the Annual Report advises that 78% of applicants were satisfied with the conduct of reviews of decisions made under the *Right to Information Act 2009* and the *Information Privacy Act 2009*. Whilst this is very high, it must be noted that conversely this indicates a 22% dissatisfaction rate. Would you please briefly address, in general, why applicants have remained dissatisfied, and what actions have been taken, if any, to address the issues complained about?**

Senior officers of OIC, including the Information Commissioner and the Right to Information Commissioner, review applicant surveys upon receipt. Appropriate action is taken either with respect to an individual issue or where a systemic issue is identified.

Timeliness is an issue that applicants consistently raise and is always a focus for OIC in conducting reviews. However, reviews must be conducted in a way that accords natural justice to all parties and this requires an appropriate period for submissions to be made and considered. Timeliness can also be affected by delays in responses from agencies, the complexity of the issues raised and by the volume of documents relevant to the application.

At the commencement of a review applicants are advised about the process and the role of the OIC, including potential time frames. Applicants are updated on a regular basis as to the progress of the matter.

A number of applicants do not understand the role of OIC upon external review and wish to agitate the issue that is the original driver for the application for documents. Despite OIC explanations that it is limited to consideration of matters relating to access to information, some applicants do not understand. Applicants are also informed at the commencement of the review about the role of OIC.

It is the nature of review bodies such as OIC that some applicants will not be happy with the outcome, either because they have been denied access to information they believe should be released to them or where they are objecting to the release of information to someone else.

It is pleasing to note however, that despite a significant number of applicants not being happy with the outcome, the majority of those applicants are nevertheless happy with the conduct of the review and OIC's process.

- 12. Over the reporting period, the OIC finalised a record number of 458 review applications (against a target of 300). The report advises that “the continued high closure rate can be attributed primarily to increased temporary resources and capitalisation on improved efficiencies in work practices”. Would you please clarify this and, further, advise what additional factors contributed to this record rate?**

In 2012-13 the OIC budget included temporary resources to meet the unfunded increase in external review demand experienced since the commencement of the RTI and IP Acts in 2009. The temporary resources have enabled OIC to employ additional external review staff on a temporary basis to meet community demand for external review services. The temporary resources assisted OIC to meet such demand in a timely manner and ensure a backlog of applications does not accrue.

Improved efficiencies in work practices ensure effective use of OIC resources to reduce duplication of effort and close monitoring of progress of reviews. OIC continues to ensure that the knowledge management systems used by staff conducting external reviews is maintained and current. As well as the annotated legislation which is publicly available, external review staff have access to an extensive database of internal resources. Additionally, advanced training in negotiation skills is provided to all staff.

The team structure established in 2011 continues to ensure close supervision of reviews. Reviews are closely monitored by senior officers to ensure an ongoing focus on opportunities for informal resolution and to ensure the appropriate process is followed. Timeliness is a major focus but reviews must be conducted in a fair and impartial manner that ensures all parties have an opportunity to be heard.

Close attention is given to ensure that the most efficient and effective allocation for each particular file is identified.

A reduction in turnover of both permanent and temporary staff in recent times has assisted with achieving efficiency in dealing with external review applications.

Performance

- 13. Page 25 of the report indicates that the median days taken to finalise a privacy complaint considerably increased, from 4 in 2011-12 to 18 days for 2012-13. Relevantly, it is noted that the number of complaints received during the reporting period was slightly down compared to the previous financial year (page 26). In view of this, please outline why it is thought the days taken to finalise a complaint increased?**

The role of the OIC under the IP Act in relation to privacy complaints is to provide a mediation service. The OIC does not have a determinative or recommendation function to finalise complaints. The finalisation of privacy complaints made to the OIC is therefore substantially affected by the participation of the complainant and agency.

OIC accepts a relatively low number of privacy complaints. As a result, timeliness performance measures can also be significantly affected by variations in individual matters. A complicated mediation where the parties are slow to respond to each step in the mediation

may cause difficulties in attempting to resolve the complaint and consequently cause a delay in finalising a complaint.

Whilst timeliness is an important performance indicator, it is also noted that it is the nature of mediations that complaints that successfully resolve can involve far more discussion than complaints where the parties will not agree. For example, one complaint was open for 560 days. Finalisation of the complaint was primarily delayed due to lengthy negotiations and waiting for responses from the agency on offers to resolve the complaint. It should be noted that this complaint was successfully mediated with a deed of release entered into between the agency and the complainant and a financial payment made to the complainant in settlement.

OIC will continue to examine its mediation processes to identify further improvements to ensure timely management of complaints.

As mentioned in response to Question 5, changing the measure for timeliness of privacy complaint processes from median days to mean average days to accept a complaint is intended to make this measure more meaningful and relevant.

14. In the State Budget for 2013-14, the following were listed as the major deliverables for the OIC:

- **providing further online training courses to agencies that allow for flexible and low-cost training accessible to metropolitan and regional areas and providing targeted face-to-face training for specific identified agencies and topics of interest**
- **conducting audits of local councils and universities on their compliance with certain obligations under the RTI and the IP Act**
- **continuing to support open data initiatives**
- **continuing to finalise external reviews and privacy complaints in a timely manner**
- **promoting understanding of right to information and privacy rights and responsibilities in the community, particularly in rural and regional areas**
- **providing educational resources for both agencies and the community in the area of privacy and complaints**
- **reporting to Parliament on the results of the 2013 Agency Self-Assessed Electronic Audit of compliance with the RTI Act and the IP Act across the public sector.²**

Would you please provide an update on the OIC's progress against these deliverables?

² State Budget, Service Delivery Statement, 2013-14, page 60-61.

Providing further online training courses to agencies that allow for flexible and low-cost training accessible to metropolitan and regional areas and providing targeted face-to-face training for specific identified agencies and topics of interest

As set out above in response to Question on Notice No.6, OIC has provided further online training courses to agencies in 2013-14 that allow for flexible and low-cost training accessible to metropolitan and regional areas and providing targeted face-to-face training for specific identified agencies and topics of interest.

In March 2014 a further two online courses were released:

- Privacy Complaint Management
- Access Training for Decision Makers

The Privacy Complaint Management course explains what constitutes a privacy complaint, how to identify and deal with a privacy complaint, the key factors in successfully resolving a privacy complaint, and key steps to take when managing a privacy complaint.

The Access Training for Decision Makers course is comprised of three separate modules and explains the process for making decisions on access and amendment applications under the RTI Act and Chapter 3 of the IP Act.

OIC's current suite of online courses includes:

- Right to Information Act – General awareness
- Information Privacy Act – General awareness
- Public Health Agencies and the Information Privacy Act
- Information Obligations of Public Service Officers
- Access Training for Decision Makers (Module 1, 2 &3); and
- Privacy Complaint Management Training

These online courses are complemented by face-to-face information sessions, workshops, live webinars and tailored courses, including:

- RTI/IP practitioner forums in August 2013 and March 2014 included training on Right to Information and Privacy matters
- Access Training for RTI and IP Decision Makers in September 2013
- Training for Hospital and Health Services RTI network in October 2013 on Right to Information and Privacy
- Legal Professional Privilege and Breach of Confidence Exemption Workshops for RTI practitioners in November 2013
- Neither confirm nor deny the existence of documents Workshop for RTI practitioners in November 2013
- Fast Track Negotiation Skills Training for RTI/IP practitioners in February 2014
- Substantial Diversion of Agency Resources Workshop for RTI practitioners in March 2014
- Training to University of Queensland in August 2013 on Right to Information and Privacy
- Training to Gold Coast Commonwealth Games Corporation in August 2013 on Right to Information and Privacy

- Training to Health Quality Complaints Commission in November 2013 on Right to Information and Privacy; and
- Training to Queensland Museum in March 2014 on Right to Information and Privacy.

Conducting audits of local councils and universities on their compliance with certain obligations under the RTI and the IP Act

A review of the Rockhampton Regional Council's compliance with the RTI Act and the IP Act was conducted in 2013-14. The review report was provided to the Chief Executive Officer for a formal response in April 2014 and was presented to the Chair of the Legal Affairs and Community Safety Committee for tabling in the Legislative Assembly in early May 2014.

Reviews of four universities' compliance with the RTI Act and the IP Act commenced late in 2013 and are currently under way. The universities currently being reviewed are:

- the University of Queensland
- the Queensland University of Technology
- Griffith University; and
- University of Southern Queensland.

It is expected that the reviews will be completed and a draft report prepared by the end of 2013-14. In order to allow for the consultation required to finalise the report, OIC aims to present the report to the Chair of the Legal Affairs and Community Safety Committee for tabling in the Legislative Assembly in August 2014. All four compliance reviews are progressing as planned.

Continuing to support open data initiatives

OIC has continued to play an active role in supporting Open Data initiatives, including through participating in the Senior Officers Working Group on Open Data and Queensland Government Open Data events. OIC has also been consulted by the Department of Premier and Cabinet regarding the strategic direction of future Open Data initiatives.

OIC has an advisory role to support agencies to ensure they comply with the government's objective of releasing the maximum amount of data on the Open Data portal while not compromising the privacy of individual members of the community whose data is contained in the dataset. OIC provides practical advice, based on the OIC guidelines on publishing data and privacy.

OIC has also assisted agencies to promptly resolve unforeseen issues as they arise. For example, when concerns were raised in February 2014 regarding the level of detail of personal information published in a QPS crime statistics open dataset, OIC made enquiries of, and provided advice to, the Queensland Police Service and the Department of Premier and Cabinet to ensure appropriate action was taken. In this case, the high level of geospatial data the dataset enabled individual properties where a crime had occurred to be identified. This in turn raised the potential for persons associated with those properties to also be identified, including in many cases, victims of those crimes. The outcome of these discussions was a proposal to adjust the dataset to afford a greater level of privacy for the community following an interim response of removal of the dataset.

Continuing to finalise external reviews and privacy complaints in a timely manner

External Review

As set out in response to question on notice 1, the median days to finalise an external review in 2013-14 is anticipated to be higher than that in 2012-13 and has been affected by the large number and nature of applications received in 2012-13 and 2013-14. However, as at 31 March 2014, OIC had only 13% of files on hand that were older than 6 months and it is anticipated that no files will be more than 12 months old at 30 June 2014. OIC continues to finalise a high proportion of external applications informally, with 91% of files informally resolved in the year to date as at 31 March 2014.

Privacy Complaints

As mentioned previously, a new measure has been introduced this year which means there is yet no exact comparative data to determine the timeliness in resolution of accepted privacy complaints from previous years.

Timely resolution of complaints is one of the major contributors to client satisfaction and is a key measure against which OIC measures its performance. The new performance measures of 14 mean average days to decide whether to accept a privacy complaint and 90 mean average days to finalise an accepted privacy complaint have been introduced in the 2013-2014 financial year. As at 31 March 2014 the mean average days to decide whether to accept a complaint was 14 days; and the mean average days to finalise an accepted complaint was 170 days.

There are a number of factors that may contribute to the mean average days to finalise an accepted privacy complaint exceeding 90 days. In particular, it is noted that while a mean average provides a more meaningful measure than a median where the numbers of complaints are low, a mean average is still vulnerable to wide variations in individual matters. As a result, there is a real possibility that the mean average days to finalise an accepted privacy complaint for 2013-14 could be substantially affected by the nature of further complaints that are finalised this financial year.

Once a complaint is accepted the mediation of the complaint commences. Invariably mediation requires lengthy negotiation between the parties comprising offers and counter offers and concomitant delays while authorisation and responses are considered particularly at the agency level. As set out in response to 13, mediation of complaints can involve significant delay by agencies and complainants, particularly where the complaint is eventually successfully mediated following careful consideration of potential outcomes. The current mean average of 170 days to finalise an accepted privacy complaint in part reflects one complaint which by reason that it involved a relatively significant ex-gratia payment and an agency undergoing an organisational restructure took an unusually long time to successfully settle.

Promoting understanding of right to information and privacy rights and responsibilities in the community, particularly in rural and regional areas

OIC continues to identify effective and efficient ways to promote understanding of right to information and privacy rights and responsibilities in the community, particularly in rural and regional areas. With this in mind OIC uses media, such as television, print and radio, to

deliver key messages about information rights and to raise OIC's profile more widely. For example, during 2013-14 OIC has to date participated in print, television and radio interviews regarding both RTI and privacy matters in regions including Brisbane, Mackay, Sunshine Coast and Rockhampton. During Privacy Awareness Week from 4-10 May 2014, OIC will visit regional stakeholders in Toowoomba and Charter Towers to discuss agency privacy obligations with executive team members and to deliver staff information sessions. Articles and community checklists supporting the Privacy Awareness Week theme of individuals taking charge of their privacy will also appear in newspapers across all regions in Queensland.

Results of OIC's 2013 Self-Assessment Electronic Audit (SAEA) reported that regional agencies had a low level of compliance with the RTI Act and IP Act. As a result, OIC commenced a regional engagement project to provide targeted support to these agencies in order to promote better understanding of RTI and IP and improve compliance. With respect to regional agencies, the project identified sixty-four agencies reporting low level compliance. Each agency was contacted directly by telephone and discussions were held to identify their specific needs. Subsequently, assistance and ongoing support was provided through directing agencies to OIC's online resources, training and Enquiries Service. Due to the positive response received the project was extended to capture a further thirty-four regional agencies to promote understanding of information rights and responsibilities more broadly.

Providing educational resources for both agencies and the community in the area of privacy and complaints

OIC has particularly focussed its educational efforts in the area of privacy obligations in complaints management in 2013-14. In March 2014 the online training course on how to deal with a privacy complaint was launched.

An OIC report on a review of privacy in complaint handling systems was also tabled in Parliament in March 2014. The report identified further information resources that would assist agencies to ensure complaint management systems comply with the privacy principles under the IP Act. OIC is finalising information guides on anonymity and confidentiality in complaints, the interaction of natural justice and privacy in complaints and disclosure of complaint information. Discussions have also occurred between OIC and the Office of the Ombudsman on incorporating relevant material into the Ombudsman's training resources to maximise awareness.

OIC has developed a number of resources that will be released during Privacy Awareness Week in early May on the theme of safeguarding your privacy, particularly during online interactions.

Reporting to Parliament on the results of the 2013 Agency Self-Assessed Electronic Audit of compliance with the RTI Act and the IP Act across the public sector.³

The *2013 Right to Information and Information Privacy Electronic Audit: Queensland public sector agencies' responses and comparative analysis with 2010 results* report was tabled in Parliament on 10 September 2013.

³ State Budget, Service Delivery Statement, 2013-14, page 60-61.

The report found that overall, considerable progress was reported by agencies as to their compliance with obligations under the RTI Act, IP Act, Ministerial guidelines under the RTI Act, and relevant requirements including specific record keeping obligations under the Public Records Act 2002. One hundred and eighty-seven agencies across various sectors were audited, namely, departments (21), local governments (64), universities and statutory TAFEs (9), Government owned corporations (12), hospital and health services (16) and other agencies (65). Various levels of progress were reported by certain sectors. Key results as reported by agencies included:

- All agencies reported improved performance regarding full or partial implementation of obligations under RTI and IP Acts - an increase of 14 percentage points since 2010 to 85%.
- Strong reported performance in the Government owned corporation (GOC), Queensland Government department and university and TAFE sectors with 94% full or partial implementation of obligations. A 10 to 14 percentage point improvement in compliance was reported from 2010 for GOC and university and TAFE sectors.
- While the local government and other agency sectors reported a 15 percentage point improvement in performance since 2010, further improvement is required. These sectors reported 82% full or partial implementation of obligations.
- The highest reported level of compliance related to application processing and privacy, with 90% of obligations reported as having full or partial implementation; and
- 109 agencies (58%) reported not having implemented at least one of the 'push model' strategies ie a publication scheme, disclosure log or administrative access arrangement. Of significance, almost half (88) of agencies don't have any administrative access schemes. A third (62) reported that they have or are in the process of either implementing a new administrative access scheme since commencement of the RTI Act in 2009 or introducing new information into an existing administrative access scheme. Where agencies had a publication scheme they reported strong compliance with relevant requirements.

The report encouraged active leadership by agencies to maintain and review activities required to ensure full compliance is achieved. Such leadership is critical to ensure the broader objectives of the legislation are fully realised to provide better and easier access and to build community awareness and confidence in access to public sector information.

Outlook for 2013-14

15. What do you see as the biggest challenge in the next 12 months for the OIC?

Demand for external review of agency decisions about access to documents has significantly increased in the five years since the introduction of the RTI Act and IP Act. OIC received a record number of applications for external review in 2012-13 and has experienced a similar level of demand in 2013-14 as at 31 March 2014. This indicates that the increased demand is not the short-term result of applicants and third parties testing new legislation and a permanent solution is required.

The effectiveness of the OIC in meeting increased community demand for external review services since 2009 has been the result of a number of strategies OIC has had in place to assist it to manage the high demand for external review, including efficiency measures, capacity building, and advice to government on policy changes. A temporary increase to funding from previous years savings to enable temporary external staff to be employed has been important in ensuring additional unfunded external review demand could be met, pending the completion of the legislative review of the RTI and IP Acts.

In response to the public consultation discussion papers on the review of the RTI Act and the IP Act, the OIC identified a number of mechanisms to assist in managing demand, including broadening the power to remit certain external reviews to agencies for decision, reinstating internal review and the threshold for consultation with third parties. Such changes may contribute to reducing demand and the more efficient and effective use of government resources.

Access to additional funds to employ temporary external review staff is not available to OIC in 2014-15. It is likely timeliness will decrease as a result until a permanent solution is implemented. Timeliness is the major cause of dissatisfaction with the external review service and undermines confidence in government accountability and transparency. OIC will continue to focus on strategies to manage demand and meet community expectations for external review services to the greatest extent practicable.

In 2014-15 OIC will also focus on supporting agencies to meet right to information and information privacy obligations and apply good practices in implementing initiatives such as outsourcing, open data, the 'one stop shop' portal and increased information sharing. Such issues present opportunities and challenges for all sectors including Queensland Government departments and local government. OIC will identify good practices and provide advice and information resources to support agencies to meet community expectations.

In 2013-14 OIC provided comprehensive submissions in response to public consultation discussion papers regarding the review of the RTI and IP Acts. If legislative changes resulting from this review were made in 2014-15, it is likely to result in significant work for the OIC to review training, information resources and knowledge management systems to reflect such changes.

Privacy

- 16. In 2012-13, it is reported that a large proportion (33%) of privacy complaints continued to fail to meet the technical requirements of a privacy complaint under the IP Act (Annual Report, page 26). In response to this ongoing problem, the OIC reports that it has taken a number of measures including further re-designing its online form to assist complainants in understanding their privacy rights; publishing a plain English publication on the 10 most common 'privacy myths'; and production of a short animated features as a means of visually publicising the privacy message. What impact have these measures had so far?**

There is evidence to suggest that such initiatives and other OIC activities have been successful in reducing the proportion of privacy complaints that fail to meet the technical requirements of a privacy complaint under the IP Act.

Section 166(3) of the IP Act states that before a complainant can lodge their privacy complaint with OIC, they must make a complaint to the relevant agency and at least 45 business days must have elapsed. In 2012-13 and previously, a failure to comply with 'section 166(3) requirements' was the single biggest reason why complaints were not accepted by OIC.

In 2013-14 there has been a marked decrease in privacy complaints not accepted on this basis. As at 31 March 2014, only 2 complaints or approximately 6.4% of all closed complaints were closed for this reason. The corresponding figure for the 2012 – 2013 financial year was 27%. Importantly, none of the complaints made using the online form failed to meet the section 166(3) requirements. It would appear that in part, this marked decrease is due to a potential complainant accessing the form and being informed in the course of filling it out, that a complaint cannot be made yet to the OIC.

There will always be a proportion of privacy complaints that continue to fail to meet the technical requirements under the IP Act. In most cases these can be quickly dealt with and the person making the complaint can be advised that the complaint is out of jurisdiction. However, it is not always clear at the outset, whether a privacy complaint is 'within jurisdiction'. While complainants usually have a common sense understanding of the meaning of privacy, they are understandably less familiar with the technical nuance of privacy rights and responsibilities in the IP Act. There are a number of complaints made to the OIC where OIC must make further enquiries with the complainant and the agency and make a careful assessment to determine whether the commissioner is authorised to deal with the privacy complaint.⁴

In 2013-14 OIC has experienced significant demand for advice to assist agencies to ensure privacy obligations are appropriately considered, particularly in relation to new initiatives and technologies. As set out above, OIC has also focused on providing resources to improve agency privacy complaint handling practices, which is likely to impact on the community's understanding of the privacy complaint process including technical requirements.

Staffing

17. The Annual Report indicates that the OIC continues to maintain 33 FTE staff, as in 2011-12. Please advise whether the office anticipates any change in its staffing numbers during the year and the reasons for any change?

The OIC has maintained its permanent establishment of 33 FTE for 2013-14. Similarly, approval to carry forward funding from surplus cash reserves in 2013-14 enabled OIC to continue to meet the costs of employing additional temporary staff in 2013-14 to meet the unfunded additional external review demand, consistent with the previous four years. It is noted that the demand for external review in 2013-14 is consistent in the year to date as at 31 March 2014 with the record high level of demand in 2012-13.

⁴ Section 167 *Information Privacy Act 2009*

Reports and desktop audits

18. The OIC tabled three reports on reviews under the RTI Act or IP Act in 2012-13 (Annual Report, pages 31-32). A further four reports, completed during 2012-13, concerning reviews and audits, will be presented to the Committee in 2013-14. In relation to the seven reports:

- **What proportion of recommendations were accepted by agencies?**
- **How many of those recommendations have been implemented?**
 - The Department of Transport and Main Roads (TMR) compliance review report resulted in six recommendations being made and all were accepted.

The follow-up review report tabled in March 2014 found that TMR had implemented five of the six recommendations from the 2012-13 review report, and one recommendation is being progressed towards implementation.

- The Camera Surveillance and Privacy Review Report resulted in fifteen general recommendations being made for all agencies to which the privacy principles under the IP Act apply.

The review was less focussed on assessing agency compliance with the privacy principles in this area and more on shining a general spotlight on the interaction between the principles and CCTV administration. As the first of its kind, the broader agency survey was designed to provide a baseline measure for later reviews.

Implementation of the recommendations of the review by agencies will be monitored in a number of ways. Specific agency compliance reviews can monitor compliance with the privacy principles in relation to camera surveillance. Other opportunities to obtain information about compliance may be incorporated into other reviews or self-assessment audits.

OIC will also consider whether to conduct a specific follow-up review approximately three years after the initial review, taking into account relative risks and priorities for performance monitoring resources at that time.

In the interim, implementation of the recommendations of the review by some agencies have and will be monitored incidentally in a number of ways. For example, Camera Surveillance and compliance with the privacy principles in the IP Act will be included as part of future compliance reviews of the Hospital and Health Services and local governments.

The response to Question on Notice 25 from the Committee in 2013 discussed changes that had occurred at the agency level at that time in response to this report. Since that time, OIC has increasingly been consulted by a number of local governments, and government agencies including the QPS and given advice about the operation of CCTV's including the use, collection, storing, and sharing of information between agencies and the individual's right to access such camera surveillance footage.

- The Department of Education, Training and Employment compliance review report resulted in nineteen recommendations and all were accepted.

A follow-up review will be conducted in 2014-15 to assess implementation of the recommendations. The review findings will be detailed in a report and tabled in the Legislative Assembly.

- Results of Desktop Audits 2011-12: Review of Publication Schemes, Disclosure Logs and Information Privacy Awareness in Departments, Local Governments, Statutory Authorities and Universities.

Not all OIC reports make recommendations seeking an agency response. For example, individual desktop audits are reported with recommendations individually to each agency, but the aggregate report to Parliament does not identify individual agencies, and instead reports generally on findings and opportunities for improvement across the board. Survey reports and the self-assessed electronic audit reports are similar.

- 2013 Right to Information and Information Privacy Electronic Audit: Queensland public sector agencies' responses and comparative analysis with 2010 results.

This report does not make individual agency recommendations.

- Results of Desktop Audits 2012-13: Review of Publication Schemes, Disclosure Logs and Information Privacy Awareness in Departments, Local Governments, Statutory Authorities and Universities.

This report does not make individual agency recommendations.

- Report No. 2 of 2011-12 – 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)

The 2011-12 review report concluded that Queensland Health (QH) was progressing well in meeting its legislative obligations. The report made 20 recommendations: to improve the proactive disclosure of information, to support compliance with RTI and IP obligations following a change to a structure incorporating a department and independent Hospital and Health Services, and to improve handling of requests for information.

In the QH formal response to the review findings, Director-General Dr Tony O'Connell agreed to all recommendations and indicated that the process had been most helpful in refining implementation of this important legislation.

In 2013-13 OIC conducted a follow-up review to assess QH progress on implementing the report recommendations. The review found that QH has implemented 17 out of 20 recommendations in full, and three are in progress.

- Report No. 3 of 2011-12 – Queensland Police Service compliance with the *Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld)

The 2011-12 review report concluded that the Queensland Police Service (QPS) had made progress in meeting its legislative obligations. The report made 28 recommendations: to improve strategic management of proactive release of information, to ensure practices were consistent with policy requirements; and to improve legislative compliance of processes for handling applications for information under the RTI and IP Acts.

In the QPS formal response to the review findings, Police Commissioner Atkinson affirmed that all the recommendations should be implemented subject to potential issues such as resource availability and interpretation.

In 2013-14 OIC conducted a follow-up review to assess QPS progress on implementing the report recommendations. The review found that QPS has implemented 24 out of 28 recommendations in full and four are in progress.

- 19. With regards to the report *In Camera surveillance and privacy: Review of camera surveillance use by Queensland government agencies and compliance with the privacy principles in the Information Privacy Act 2009 (Qld)*, the Committee was concerned to note the finding that “ambiguity surrounding management responsibilities of camera surveillance systems represented a risk, which left unmanaged, could result in a significant privacy breach” (Annual Report, page 31).**

The OIC recommended that all agencies review their camera surveillance systems to ensure compliance with the relevant privacy principles. Can you please provide the Committee the outcome of this recommendation?

As set out in response to Question on Notice 18 above, implementation of the recommendations of the review by agencies will be monitored in a number of ways including through future agency compliance reviews of local government and Hospital and Health Services. OIC will also consider whether to conduct a specific follow-up review approximately three years after the initial review, taking into account relative risks and priorities for performance monitoring resources at that time.

However it is noted that OIC has increasingly been consulted by a number of local governments, and government agencies including the QPS, and given advice about the operation of CCTV's including the use, collection, storing, and sharing of information between agencies and the individual's right to access such camera surveillance footage. In June 2014 the Acting Privacy Commissioner has also been invited to give a presentation to the South East Queensland Community Safety Practitioners meeting to discuss privacy issues regarding CCTV systems. OIC has also received feedback from agencies that they have reviewed the review report and subsequent OIC guidelines on camera surveillance and privacy to ensure they are compliant in developing and reviewing systems.

It would therefore appear that the review has raised greater awareness of agency privacy obligations relating to camera surveillance, and agencies have actively engaged with OIC to access guidance and advice to ensure compliance.