



**Office of the Information Commissioner
Queensland**

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23 April 2018

The Hon Peter Russo MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000

Dear Mr Russo

Meeting with the Office of the Information Commissioner

I refer to your letter of 22 March 2018.

Please find attached the response of the Office of the Information Commissioner to Questions on Notice provided by the Legal Affairs and Community Safety Committee.

I look forward to our meeting with the Committee on 30 April 2018.

Yours Sincerely

A large black rectangular redaction box covering the signature of Rachael Rangihaeata.

Rachael Rangihaeata
Information Commissioner

PRE-HEARING QUESTIONS ON NOTICE
OFFICE OF THE INFORMATION COMMISSIONER (2018)

Performance

- 1. There were 159 more external reviews received in 2016-17 than in the previous financial year. Are you able to identify reasons for this increase?**

The Office of the Information Commissioner (OIC) has considered this issue at length. There is no identifiable trend in either applicant type, information sought or refusal ground relied upon by agencies and Ministers that assists in determining the reasons the 2016-17 increase in external reviews. As in other financial years and indeed the current year, OIC routinely receives:

- multiple applications for review from single applicants
- multiple applications for review from multiple applicants on topics of significant public interest that emerge
- applications from a broad range of applicants to a broad range of agencies on complaint based matters. These routine matters include for example, where information is sought about workplace disputes, neighbourhood disputes and disputes consequent to an individual's contact with an agency through justice, child safety and policing systems, the education and health systems and land based systems connected to planning, development and activity regulation.

The above routine matters are in addition to requests for unique information connected to an individuals' personal interests for example.

2016-17 saw a global increase across all types of external review matters. Data on the number of applications made to agencies across all sectors in 2016-17 shows that the total number of applications was also higher than in any other year since commencement of the RTI and IP Acts.¹

- 2. Given that OIC has consistently bettered the target of finalising 300 reviews, with over 400 reviews finalised in each of the past five financial years, does the OIC intend to increase the target?**

OIC has achieved these results with temporary staff funded by approved access to cash reserves in most years to meet the additional unfunded demand since 2009. As discussed in response to question 14 below, in accordance with the recommendation of the Strategic Review of the OIC, we have sought recurrent funding that would provide a consistent level of external review funding. Without additional funding it would not be possible to maintain this level of output, particularly when managing a very high level of incoming applications and a likely backlog. OIC will review this target once the budget outcome is known.

¹ Queensland Department of Justice and Attorney-General, 2016-17 Annual Report *Right to Information Act 2009 and Information Privacy Act 2009*, tabled on 10 April 2018. The total number of applications to agencies was 14,143, compared to 13,099 in 2015-16.

3. Seventy-three percent of applicants expressed satisfaction with the conduct of external reviews. Did applicants provide reasons for their satisfaction/dissatisfaction?

Applicants are invited to provide reasons for their satisfaction/dissatisfaction as part of OIC's end of review survey process. In 2016-17, out of 35 survey responses returned to OIC, 14 elected to not comment and 21 provided short comment. In terms of dissatisfaction, the tenor of concerns was connected to the limits on OIC's jurisdiction and dissatisfaction with not receiving further information on review. Undertaking an external review means considering access to information issues only- not for example, the conduct of agency officers in a particular case nor the content of information. External review staff frequently explain the confined scope of our jurisdiction with applicants during the course of an external review. In terms of satisfaction, the professionalism of OIC staff was a clear theme.

4. The Annual Report mentions that resources were published or reviewed to address trends identified through the Enquiries Service, amongst other things. ² Which trends were identified through the Enquiries Service and what publications resulted from, or were amended as a result of, the identification?

The following resources were produced or significantly amended as a result of trends identified through OIC's various points of contact with agencies and the community:

- NEW Information Sheet: *How to Apply for Government Documents*

As in previous years, a significant number of enquiries from members of the public were about the basic process of applying for government documents. To better meet that need, OIC produced a single comprehensive Information Sheet, *How to Apply for Government Documents*, which includes information about completing the approved application form and includes pictures to aid understanding and cater to different learning styles. This has replaced the existing *How to Apply under the RTI Act*, *How to Apply under the IP Act*, and *Which Act? Information Sheets*.

- NEW Training Video and Transcript: *Third Party Consultation*

Through increased enquiries from agency decision makers it was identified that there was confusion about when and how to conduct third party consultation – whether this should be done in all cases or only where the release of information may be of concern to the third party. To support different ways of learning and engaging with our stakeholders, OIC produced a short training video presentation which explains when third parties need to be consulted, covers the purpose of consultation and notifying the parties, and explains what to do if third parties object to release of documents. A transcript of the content to accompany the video was also prepared.

- NEW Training Video and template notice: *Decision Writing*

In response to an increasing number of requests for guidance about drafting effective decision notices OIC developed an online training video to promote better decision making and more fulsome reasons for decisions. OIC also published a template decision notice which all decision makers are encouraged to use and tailor to their specific circumstances.

² See Office of the Information Commissioner, *Annual Report 2016-17*, p 35.

- UPDATED Information Sheet: *Making an Access Application to the Queensland Police Service*

The Queensland Police Service has numerous administrative access schemes. OIC's Enquiries Service consistently received enquiries about making RTI or IP access applications for information available through these access schemes. In order to better assist the community in utilising these schemes, OIC reviewed and refreshed the Information Sheet.

- UPDATED Guideline: *Law Enforcement and Public Safety*

The law enforcement and public safety exemption is a large and complex exempt information provision and there were an increasing number of agency enquiries about its application. In addition, the guideline had not been updated for several years. To meet the increased demand, it was extensively reviewed and a companion video was produced to better meet the needs of agency decision makers and cater to differing learning styles.

- UPDATED Guideline: *Substantial and unreasonable diversion of agency resources*

This guideline was amended to address an issue identified through enquiries from agency decision makers about drafting compliant notices under section 42 and applications dealt with in our External Review function. The guideline now includes a template letter for notice of intention to refuse to deal with an application because doing so would be a substantial and unreasonable diversion of agency resources. The effect of this notice is to give the applicant an opportunity to work with the agency to make the application in a form that means it can be processed. A number of applications where an agency legitimately made a decision to refuse to deal on this ground nonetheless were overturned on external review because of deficiencies in the notice.

In the 2016-17 Annual Report, OIC reported that three new resources were produced (identified above) and 41 guidelines and information sheets had been reviewed.

5. How does the OIC deal with agencies that seek multiple/lengthy extensions of time during a review?³

OIC utilises a range of mechanisms to deal with agencies seeking multiple and lengthy extensions of time in which to provide OIC with documents, return submissions or answer enquiries about issues that are raised by an external review. At a strategic level, OIC is committed to tightly managing the process on all external reviews in an effort to ensure timeliness. In practice, this is effected by:

- requests to agencies specifying a return date with prompt telephone follow up occurring if information is not received by the due date;
- extension requests are required to be made in writing explaining why the extension is sought and proposing a date by which the response will be received;
- extension requests are considered at a senior level, either by the Right to Information Commissioner (RTIC) or the Assistant Information Commissioner (AC) with delegated responsibility for directly supervising an external review;
- in the face of repeated delays, the RTIC or AC will telephone or write to a senior manager of the agency to express concern about the progress of the matter, remind agencies of their

³ See Office of the Information Commissioner, *Annual Report 2016-17*, p 19.

statutory obligations to assist OIC under sections 96, 100, 102 of the RTI Act as relevant and discuss ways the matter may be expedited, for example, by way of meeting. It is noted that as OIC calls for application processing information and information in issue at a very early stage in a review, OIC will continue to progress a review as much as possible until the agency can provide comprehensive submissions in response to an enquiry or preliminary view on disclosure; and

- in limited cases, the RTIC may issue a direction under section 103 of the RTI Act requiring production of information or documents. In the 2016/17 year, only 3 section 103 notices were issued.

Further, if it comes to OIC's attention that a particular agency appears to be experiencing delays across a number of matters on external review with OIC at a single time due to resourcing issues caused by for example, deployment of staff to assist with disaster relief, we will contact that agency to discuss how we might work with them to prioritise requests and stagger response times for an agreed period of time.

6. What awareness activities made up the total of 684 that were conducted in 2016-17?

OIC raises awareness about right to information and privacy in the community and within government through a diverse range of activities including regional visits, participation in events including presenting speeches and panel discussions, media engagement and releases and promotion of information via OIC's social media channels.

OIC also conducts two major events each year: Privacy Awareness Week (PAW) and Right to Information Day, including the Solomon Lecture.

Right to Information Day 2016 focussed on Open Government in action. The Solomon Lecture was delivered by Professor Anne Tiernan and explored the impact of collaborative processes on Queensland's future prosperity and trust in public processes and institutions.

PAW 2017 ran from 15 to 21 May, with the theme "*Care before you share*". PAW comprised a range of events, including a launch event with keynote speeches from the Attorney-General, The United Kingdom Information Commissioner, the Australian Productivity Commission, eHealth Queensland and the Queensland Privacy Commissioner.

7. In the response to the QON provided by the former committee in February 2017, the OIC advised that the learnings from the pilot of a survey tool would be incorporated into a review of an online tool for privacy complaints. ⁴ Has this occurred?

OIC introduced an online survey tool on 1 July 2017 to measure the satisfaction level of privacy complainants with OIC's complaint handling process. Learnings from the pilot of a survey tool were used to inform the question design and survey length. Unfortunately, the rate of return of surveys remains low, with only two (2) received in the 2017-18 financial year to date. With insufficient meaningful data obtained in four of the last five financial years to 2016-17, OIC has proposed to discontinue this as an SDS measure from 2018-19.

⁴ Office of the Information Commissioner, correspondence dated 17 March 2017, attachment, p 4.

Key decisions

- 8. The Annual Report summarises two key decisions concerning applications for access to information revealing financial benefits and payments awarded to private entities.⁵ Are you aware of any impact these decisions have had on the release of other information relating to financial benefits and payments?**

The impact of these two decisions remains uncertain because *Key decision 1* in the Annual Report 2016-17, *Glass Media Pty Ltd and Department of the Premier and Cabinet; Screen Queensland Pty Ltd (Third Party); The Walt Disney Company (Australia) Pty Ltd (Fourth Party)* [2016] QICmr 30 (18 August 2016) was appealed to the Queensland Civil and Administrative Appeal Tribunal (QCAT) by the Third Party. OIC awaits QCAT's decision in this matter with the oral hearing having taken place on 12 July 2017. Until the appeal outcome is known, the impact of both key decisions is unclear as both concerned the breach of confidence exemption in schedule 3, section 8(1) of the RTI Act. While each matter turned on its particular facts, OIC's general position was that a public interest exception can, in some circumstances, apply to equitable and contractual obligations of confidence.

Further, as OIC only receives on external review 3-4% of all applications made under the RTI and IP Acts across the State, we do not have a clear view of the application of the legislation across the sector. We are therefore not in a position to fully assess the impact of our decisions. We note that agency decision-makers generally have a wide ranging level of expertise in applying the legislation. Additionally, there is a varied approach within government about how to use confidentiality provisions in contracts, as reported by the Queensland Audit Office in its report *Confidentiality and disclosure of government contracts* (Report 8: 2017-18) tabled in Parliament on 20 February 2018.

Appeals

- 9. Twenty-one decisions were appealed to QCAT in 2016-17 compared with five appeals in the previous year.⁶**
- a. What were the grounds for appeal in these cases? What stage is each case at?**

The grounds for appeal and current status for each appeal is set out in the table at Appendix one attached.

- b. What impact did these appeals have on resourcing in 2016-17?**

The impact was felt across external review as a whole in that Principal and Senior Review Officers had less capacity to take on external review matters while also managing QCAT appeals. This necessitates more junior review officers taking on higher external review workloads and Assistant Information Commissioners needing to undertake higher vigilance in terms of supervision to ensure quality and timeliness of the review service. OIC has taken steps to mitigate the impact. We reviewed our suite of QCAT documentation to ensure that appeal books and submissions can be quickly and consistently created.

⁵ Office of the Information Commissioner, Annual Report 2016-17, pp 22-23.

⁶ Office of the Information Commissioner, *Annual Report 2016-17*, pp 19-20.

c. What impact are these appeals likely to have on resourcing in 2017-18?

OIC considers that these appeals have had a substantial impact in 2017-18. OIC's role on external review is quasi-judicial. For this reason, although OIC generally takes a very limited role in appeals arising from decisions of the Information Commissioner the number of appeals, the complexity of interrelated appeals and the legal issues they covered has meant that a considerable amount of review officer time has been spent in the preparation of submissions and fulfilment of directions issued by the tribunal as well as time before the tribunal in hearings. This is time that otherwise would be spent on review work. Thus the impact of appeals on resourcing in 2017-18 is the reduced ability of review officers to undertake a full complement of review work while attending to appeal obligations.

d. Is it likely that 2016-17 was an aberrant year or is it expected that the OIC will continue to have large numbers of decisions appealed?

2016-17 was an aberrant year in that 10 related matters were appealed to QCAT. Another 5 matters were from decisions connected to a single applicant. OIC strives to provide independent timely and fair review of decisions made about access to information and cannot predict what proportion of its decisions or even which matters are likely to be appealed. Each decision turns on its own particular facts and circumstances. OIC will continue to issue plain English decisions addressing submissions made on review and explaining the rationale for its decisions. With increasing demand for OIC's external review service, a complementary increase in QCAT appeals is possible. However, as at 20 April 2018, OIC had received 8 QCAT appeals in 2017-18.

Review of the RTI Act and the IP Act

10. Is OIC satisfied with how the review of the RTI Act and the IP Act was conducted?

OIC welcomes the Attorney-General and Minister for Justice's report to the Legislative Assembly finalising the review for the purposes of section 183 of the RTI Act and 192 of the IP Act. OIC also acknowledges the efforts of the DJAG officers involved in the review.

The review of the RTI Act and IP Act commenced in 2011 and was finalised in October 2017. The review involved two periods of public consultation, during which 64 and 69 written responses were received in 2013 and 2016 respectively. OIC made submissions in both 2013 and 2016. A staff member also met with the Steering Committee established by the Department of Justice and Attorney-General during 2016-17.

As previously reported to predecessors to this Parliamentary Committee, the uncertainty about when the review would proceed, and extended period before the review progressed and was finalised, caused OIC and potentially other stakeholders difficulty, including in relation to planning the allocation of resources for OIC functions for expected implementation. The implications for implementation are discussed further in response to question 11 below.

The amendments proposed by the review will streamline the legislation, create greater certainty, efficiency and effectiveness. Such outcomes are sought at the earliest opportunity to avoid inconvenience and cost to stakeholders involved, including members of the community, organisations and government. OIC is looking forward to amendments to implement the review recommendations progressing as soon as possible to ensure the review outcomes are realised.

OIC notes that some privacy issues were not resolved by the review as set out in response to question 11 below. Given the significance of these issues and the time already elapsed, it will be important that further deliberation occurs as quickly as possible.

11. The report on the review of the RTI Act and the IP Act was tabled in October 2017. Do you have any comments on the report's recommendations?

The Attorney-General and Minister for Justice reported that stakeholder feedback obtained as part of the review indicated that the primary objects of the RTI Act and IP Act remain valid. However, the review had "*identified a number of opportunities to improve and enhance the operation of the legislation to ensure the Acts continue to provide an effective part of Queensland's integrity framework*".

A key conclusion reached in the review report was that

The RTI Act already contains sufficient exemptions and exclusions and the flexible public interest balancing test allows for adequate protection of information where required. To add 'tailored' exemptions or exclusions directed at certain documents or agency functions may suggest that the RTI Act does not adequately protect other types of information. On this basis it is recommended there be no further exemptions or exclusions, however, a number of changes to the exemptions are proposed.

OIC supports this conclusion and has not identified any instance where sensitive information could not be protected from disclosure by application of the existing exclusions, exemptions and public interest test.

In general, the recommendations will assist in streamlining the operation of the legislation to assist in achieving its objectives in an efficient and effective way. This will reduce the cost and time involved for the community, organisations and government in improving the flow of access to the community and safeguarding the community's personal information.

The right of access under the formal application process will be simplified under a single Act, the RTI Act, reducing confusion for applicants, potential delay, refunds and review of decisions. Other recommendations to amend the legislation will clarify the operation of the legislation to provide certainty to stakeholders.

The report recommends that the annual collation of agency data and reporting on the operation of the legislation be moved from the Minister (Attorney-General) to the Information Commissioner. Recommendation 12 also provides for changes to the data reported by agencies to include privacy complaints and simplify and improve information access data, including to provide for greater consistency across jurisdictions in accordance with Open Government Partnership National Action Plan commitments. This recommendation is consistent with recommendation d of the Strategic Review Report, which states:

OIC be funded and supported to administer the collection and collation of performance reporting by agencies under the Acts. Reporting requirements should be rationalised to maximise value and minimise collection effort.

Twenty-two recommendations require legislative amendment at this stage. However, it is important that the work involved with delivering the remaining recommendation, Recommendation 13, also progresses as a matter of priority. Two important pieces of work flow from Recommendation 13 – further research and consultation to establish (i) whether there is

justification for moving towards a single set of privacy principles in Queensland, and (ii) whether a mandatory breach notification scheme should be introduced.

(i) Amalgamation of Information Privacy Principles (IPPs) and National Privacy Principles +

(NPPs) The review report concluded that there is strong support for the two sets of privacy principles that currently apply to Queensland government agencies to be amalgamated and align with the Australian Privacy Principles (APPs). However, the report noted concerns by some stakeholders about the implications of implementing a new set of principles. The report therefore proposed that the issue be examined further.

The 11 IPPs⁷ outline the principles that apply to Ministers, departments, local governments and public authorities (s18 IP Act). The nine National Privacy Principles (NPPs)⁸ apply to the health department and Hospital and Health Services⁹. The NPPs simplify the obligations contained in the IPPs, rather than change them. Consolidating the IPPs and NPPs into one set of harmonised Queensland Privacy Principles that are consistent with the APPs should reduce compliance costs and administrative burden on agencies in the long term, and would be a valuable red tape reduction exercise. As privacy demands on agencies increase, so too does the need for simple, accessible and consistent information about agencies' obligations. This is so, particularly as data has no borders and Australia will be under pressure to meet increased privacy obligations in Europe. Queensland consistency with the Australian privacy regime will reduce public confusion and ensure Queensland is at the forefront of privacy policy in this country, in line with its innovation and information economy objectives.

(ii) Mandatory Data Breach Notification scheme in Queensland

In its submission to the review, OIC noted that a contemporary legislative framework to manage new and emerging privacy and data protection risks is required to keep pace with rapid technological change. Governments collect and hold vast amounts of personal information, which is increasingly held digitally, and poses significant risk to individuals in the event of a data breach. Data breach notification allows affected individuals to take remedial steps to lessen adverse consequences, and is an important transparency mechanism for governments. However, given economic and reputational costs associated with data breaches, entities may be reluctant to report data breaches unless mandated to do so. The Commonwealth's mandatory data breach notification scheme is an appropriate model on which to base a Queensland scheme.

The implementation of the recommended amendments to the legislation and other proposed activities have significant implications for OIC functions. OIC has a role to raise awareness and educate, train and support agencies and the community in relation to the operation of the legislation. OIC will need to assess the impact of the legislative changes and review our extensive online resources including guidelines, online training (e-learning, recorded webinars, videos), self-audit tools and annotated legislation. We will also need to update our training course content, audit test programs, knowledge management resources, case management system, forms and templates. We will conduct training on specific aspects of the amendments to assist agency staff to understand the changes.

⁷ Schedule 3 of the IP Act.

⁸ Schedule 4 of the IP Act.

⁹ Section 31 of the IP Act.

It is also proposed that OIC assume the role of collation and reporting on the annual agency data on the operation of the legislation. This activity is currently being conducted by DJAG. It is also proposed that the data be modified. Development of the new data requirements in consultation with relevant stakeholders and an efficient and effective mechanism for collation and analysis of the data will be critical to a successful outcome, including minimising the ongoing resources required to produce an insightful report on the operation of the legislation.

12. The Annual Report discusses implementation of the recommendations of the Strategic Review.¹⁰ What further implementation has occurred since the drafting of the report?

OIC has made significant progress in implementing the recommendations of the Strategic Review. In addition to the implementation progress reported in the 2016-17 Annual Report OIC:

- has worked with the Department of Justice and Attorney-General (DJAG) to progress a budget submission for recurrent funding for permanent staff in accordance with the review recommendations made by the independent Strategic Reviewer, PwC
- is providing advice as required in relation to recommendations regarding legislative amendments to the RTI and IP Acts, including providing OIC with an ability to accept privacy complaints at its discretion, and to enable OIC to administer the collection of performance reporting by agencies (with appropriate associated resourcing)
- has developed and implemented a policy entitled “Management and separation of functions” to address perceptions of conflicts of interest arising from OIC’s dual role of advisor and decision maker
- has explored the potential for automated application status reports to be produced and distributed to agencies. Unfortunately, OIC’s existing database does not allow for the automatic production of meaningful reports that could be provided to agencies
- is progressing the development and implementation of a career progression strategy for OIC staff
- has completed a training needs analysis to inform OIC’s training and engagement strategy and support effective coordination of OIC’s effort.

As noted above, the legislative review of the RTI and IP Acts was tabled in Parliament on 12 October 2017. The review report contained a number of recommendations for legislative amendment that are currently being considered by DJAG. The recommendations for legislative amendment arising from the Strategic Review (as above) are being considered concurrent to the broader legislative amendments.

13. OIC’s responses to the questions on notice provided by the former committee in February 2017 identified the following key issues that the OIC hoped would be addressed by the strategic review:

- **resolution of the ongoing funding issue with respect to the increased external review demand following the introduction to the *Right to Information Act* and the *Information Privacy Act* in 2009**
- **streamlining of OIC’s organisational structure to ensure it can continue to effectively discharge its responsibilities under the legislation**

¹⁰ Office of the Information Commissioner, *Annual Report 2016-17*, p 8.

- **consideration of the transfer of the collection of statistics regarding access applications from DJAG to OIC, taking into account appropriate resourcing issues and the need for legislative change.** ¹¹

Were these issues satisfactorily addressed?

The above matters were appropriately considered as part of the Strategic Review and led to key recommendations.

- As noted above, the independent Strategic Reviewer recommended that *“OIC should receive additional permanent funding to allow for the creation of new permanent External Review positions, to effectively meet increased application volumes and complexity”*. OIC is progressing a budget submission to address the additional unfunded external review demand since commencement of the RTI and IP legislation in 2009 (refer to the response to question 12).
- In line with recommendation ‘f’ of the Strategic Review, OIC has restructured its corporate support services into a single corporate services function and established an enhanced corporate leadership role by upgrading an existing position. Temporary appointments have been made to executive support and part-time finance roles, however the permanent inclusion of these roles within OIC’s organisational structure is contingent upon the outcome of OIC’s budget submission.
- The engagement of a part-time junior resource to support the privacy unit is also subject to the outcome of OIC’s budget submission.
- The implementation of recommendation ‘d’ that OIC be funded and supported to administer the collection and collation of data and performance reporting by agencies under the RTI and IP Acts, is subject to legislative amendment and funding. OIC is currently doing preliminary work on data requirements, including to ensure consistency with national FOI metrics to give effect to Open Government Partnership data commitments, and rationalisation consistent with recommendation ‘d’. Should this recommendation be progressed, further engagement on appropriate funding and support will need to occur. Agencies would also be consulted on future data requirements.

Staffing

- 14. The Annual Report stated that there was high staff turnover as a result of limited resourcing and temporary funding.** ¹²

¹¹ Office of the Information Commissioner, correspondence dated 17 March 2017, attachment, p 9.

¹² Office of the Information Commissioner, *Annual Report 2016-17*, p 17. See also pp 53-54.

a. What level of staff turnover did OIC experience?

OIC's permanent separation rate in 2016-17 was relatively low at 5%, however as noted in the Strategic Review, OIC had an overall turnover rate of 33%, "significantly exceeding the industry standard of 15-20%"¹³.

b. What are the key reasons for staff turnover?

The high turnover of temporary staff is directly linked to the uncertainty regarding increased permanent funding for well-established additional external review demand over eight years since 2009.

c. What impact does high staff turnover have on the OIC?

It presents an ongoing managerial challenge and impacts OIC's ability to meet its service standards in an environment of increasing volume and complexity of external review applications. Continuous recruitment and training of temporary staff by OIC senior officers is an inefficient use of limited key resources. Applicants on review and agency officers also express frustration at the turnover of staff dealing with their matters.

d. Are measures in place to reduce staff turnover?

Due to the causes for the staff turnover, OIC's ability to reduce it are constrained by its ongoing budget. As noted above, OIC has sought additional recurrent funding in line with the Strategic Review recommendations. If approved, this will enable the OIC to make permanent appointments for four review officers and therefore reduce 'churn'.

e. On what basis does OIC receive temporary funding?

OIC has been able to access temporary funding under section 133 of the RTI Act in 2017-18 and most previous years. OIC has sought approval from the Attorney-General to access the OIC's cash reserves on a year by year basis. This model is not a sustainable future or ongoing option as OIC's cash reserves are depleting and it does not address the implications of the temporary nature of this arrangement.

Relocation

15. The Annual Report stated that the OIC would move to new premises in late 2017. ¹⁴

a. Did the relocation occur as planned?

OIC's relocation to new premises occurred as planned in late October 2017.

b. Were the costs of the move at or below the expected amount?

OIC relocation costs were within the approved budget.

c. Savings were expected on leasing costs and outgoings. 15 Which outgoings will be reduced?

The relocation has resulted in savings on outgoings for:

- electricity
- security

¹³ Strategic Review of the Office of the Information Commissioner, 26 April 2017, page 11.

¹⁴ Office of the Information Commissioner, *Annual Report 2016-17*, p 54.

¹⁵ Office of the Information Commissioner, *Annual Report 2016-17*, p 54.

- cleaning.
- d. Extra expenses, such as the purchase of new telephones, IT equipment, appliances and selected furniture, were not covered by the Department of Housing and Public Works. 16 What was the amount of these costs?**

As part of the relocation, OIC purchased new assets to a total value of approximately \$60,000. This included costs relating to:

- ergonomic workstations
- a Microsoft Surface Hub to support improvement to OIC's communication, audio visual and team collaboration capacity, along with associated installation and training
- kitchen appliances.

Telephone rental is included in our arrangement with Telstra at no greater cost than our previous telephone system.

- e. What are the benefits/disadvantages of the new premises?**

The new premises have provided OIC with a contemporary fit-for-purpose workspace that supports staff to effectively deliver OIC's services. Additional benefits of the new premises is the savings on lease costs as compared to other available buildings, along with savings that have been achieved in outgoing (as above).

- f. What is the length of the lease?**

OIC has signed a financial commitment to rent the premises until 31 July 2022, with two extension option periods of 12 months each.

Financial Statements

16. Are there any significant budgetary matters that you wish to raise with the committee?

As outlined above, the most significant budgetary matters for OIC are securing recurrent funding for permanent staff in accordance with the recommendations of the Strategic Review, and resourcing future IT services requirements as discussed in response to question 18.

The absence of additional funding in 2018-19 and beyond to support the increased workload will have a significant impact on the ability of the Information Commissioner to perform statutory functions as required under the RTI Act and IP Act, and ensure appropriate corporate governance, as recognised by the Strategic Reviewer.

Refusal of funding would result in substantial backlog of external review applications, with significant implications for timeliness and as a result an important limb of Queensland's integrity and accountability framework will decline in effectiveness. For government agencies to be effectively open and accountable, independent and fair review of decisions made under the RTI and IP Acts must be timely. The withdrawal of funding in 2014-15 resulted in a significant

¹⁶ Office of the Information Commissioner, *Annual Report 2016-17*, p 46.

backlog, with major delays for outcomes, including the release of information by either formal decision or through informal resolution negotiated by OIC.

Experience with previous backlogs has shown that applicants and agencies are less likely to informally resolve external reviews that are not dealt with in a timely way. OIC currently informally resolves approximately 85-90% of external review applications without a written decision. OIC is highly regarded across jurisdictions for efficient early resolution processes, which have been reviewed and replicated elsewhere.

Miscellaneous matters

17. The Annual Report describes the results of the case management system review as enabling a move toward a paper light approach to file management.¹⁷ Is the intention to move to fully electronic file management in the future?

At this time, OIC has no intention to move to a fully electronic file management system in the future. Upgrades to OIC's case management system have introduced much greater functionality and efficiency in our management of matters. While paper files exist for each matter they comprise hard copy documents received and working documents printed as required from the case management system by the responsible officer for their day to day tasks. The point of truth in terms of record keeping remains the electronic file within OIC's case management system.

Outlook for 2017-18 / 2018-19

18. In her response to the committee's questions on notice for the prior financial year, the Information Commissioner identified the transition of IT services from Parliamentary Services to the Corporate Administration Agency as a priority that the OIC would need to address in the coming 12 months.¹⁸

- a. Have the expected benefits been realised?**
- b. Were additional resources required?**

OIC has not transitioned its IT services from Parliamentary Services at this time. An organisational risk was identified in moving to CAA at the same time as the office relocation. Agreement was reached with Parliamentary Services to extend existing arrangements until June 2018.

OIC entered into a work performance arrangement with the (then) Department of Science, Information Technology and Innovation to access the services of a specialist IT project manager to ensure any transition of services meets OIC's current and future needs, and achieves expected benefits.

While options have been scoped and preliminary costings obtained, the transition of services has not progressed for two key reasons:

- Parliamentary Services has been undertaking a strategic review of its IT services, including its offering to OIC. The outcome of this review needs to be considered in weighing up the costs and benefits of OIC transitioning to an alternative provider

¹⁷ Office of the Information Commissioner, *Annual Report 2016-17*, p 48.

¹⁸ Office of the Information Commissioner, correspondence dated 17 March 2017, attachment, pp 17-18.

- Any transition of OIC's IT services is premised upon a concurrent upgrade of OIC's IT operating model, including the introduction of additional security and functionality. After initial market testings, it was identified that OIC has insufficient funds in its 2017-18 budget to implement a full IT services transition.

As part of its budget planning for 2018-19, OIC has reallocated funds to progress the upgrade of IT services (including transition if applicable), however the available funds are unlikely to be sufficient to cover all anticipated costs. Increased costs in service provision are expected whether OIC retains Parliamentary Services as its provider or transitions to a new provider.

19. The OIC intends to invest more on portable and attractive assets such as a new computer fleet, in 2018-19.¹⁹

a. When was the last time the OIC replaced its computer fleet?

OIC's computer fleet was last replaced in September 2013. Based on the usage of OIC computer fleet, at this time the decision has been made to not replace the fleet prior to the upgrade of IT Services. Instead, OIC will adopt a replace on fail approach in the short term and proposes to utilise the funds to contribute to the upgrade of its ICT systems (instead of hardware) (as above).

b. What other attractive assets does the OIC intend to purchase?

At this time, OIC has no plans to purchase any other Portable and Attractive assets. Any other purchases will be considered on an "as needs" basis to replace a failed asset or to support the effective delivery of OIC functions.

20. What do you see as the biggest challenges and risks for the OIC in the next 12 months?

The RTI and IP legislation has been operating in Queensland for 9 years. While many agencies are relatively mature in terms of compliance, community expectations appear to be increasing, requiring a greater level of proactive engagement from agencies. In addition, other jurisdictions that impact on the Queensland community are changing, such as the Australian mandatory data breach notification and privacy code requirement, and European General Data Protection Regulation.

In Queensland, and across other Australian and New Zealand jurisdictions, people are increasingly using the enquiry and information access external review services. OIC received record or very high levels of demand across all services in 2016-17, a trend that has continued in 2017-18.

A key challenge for OIC in this climate of record demand is to continue to manage our resources appropriately so as to balance the need to meet demand with the proactive investment in education, training, awareness and audit to improve practices and avert formal applications and privacy complaints to OIC so that they continue to be a last resort. Further, for OIC to continue to re-evaluate any opportunities for greater efficiency, innovation and targeted investment for optimal gain.

As set out above, OIC faces significant funding challenges and risks in 2018-19 and in the future in dealing with current and increasing levels of demand. The funding bid to implement the

¹⁹ Office of the Information Commissioner, *Annual Report 2016-17*, p 54.

Strategic Review recommendations deals with the increased level of demand experienced as a result of policy changes in 2009. The record level of demand in 2017-18 and trends across other jurisdictions indicate that OIC will need to monitor and manage demand carefully even where further permanent funding is received consistent with the Strategic Review recommendations.

The likely impacts in the event funding was not provided, are set out above in response to question 16. However the impacts are likely to be felt swiftly by OIC and stakeholders as a backlog establishes in 2018-19, with delay causing difficulties for applicants and others. OIC will monitor the impacts of demand and resource levels, including the impact on our ability to resolve reviews on an informal basis, and of high workloads and frustrated review parties on staff welfare.

21. What do you see as OIC's priorities over the next 12 months?

2018-19 will be a significant year for OIC and right to information and information privacy in Queensland. As we approach ten years of the operation of the legislation, we must take stock and reflect on what we have achieved with stakeholders during this time, and where we need to prioritise our activities in the next few years to realise the best outcomes.

During 2018-19 we will conduct a self-assessment electronic audit of all agencies. This audit will be the fourth in a series conducted every three years since 2010. This tool provides us with a good health check across Queensland Government departments, local governments, Hospital and Health Services, universities, Government Owned Corporations, statutory bodies and other public authorities. We will combine this information with other audit and relevant information to help us determine our future priorities as we increase our expectations of agency maturity and self-management of RTI and IP obligations.

Over the next 12 months OIC will also focus on continuing to implement the Strategic Review recommendations, including strategies developed in relation to training, communications and engagement and career progression. If recurrent funding is received from 2018-19, OIC will fill the relevant positions as soon as possible to provide required stability.

Another key priority will be assisting in the implementation of the Attorney-General's recommendations arising from the legislative review of the RTI and IP Acts. The results of this review is integral to a contemporary legislative framework for right to information and information privacy, and to an effective and high functioning organisation that protects Queenslanders' rights to information and privacy. OIC expects that the implementation of the review of the RTI and IP Acts will involve considerable resources in both the legislative development and implementation stages, as discussed in response to question 20.

Another ongoing priority for OIC is to raise awareness of, and promote, good privacy practices. And as evidenced by recent public concern about Facebook's alleged misuse of its users' data, public awareness of privacy incursions will continue to grow. So too will public expectations of respect for their privacy. This is pertinent for government use of online platforms for service delivery, information sharing within government, and the use of rapidly advancing technologies, such as biometric identification, CCTV, body worn cameras, drones, the internet of things and ubiquitous handheld devices. Government has a responsibility to be a pacesetter in maintaining and protecting its citizens' privacy, and OIC's privacy functions are crucial to securing high standards in governments' use of personal information and public confidence in government.

Appendix 1: Q9 – Grounds for appeal and current status for each appeal

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|--|---|--|--|
| APL241-16 | The Honourable Justice TF Carmody and Information Commissioner and Alex McKean and Department of Justice & Attorney-General | Appeal of OIC decision made 27 June 2016 to disclose a range of information related to the court of disputed returns, court rosters and the Senior Judge Administrator (appellant, Carmody, objected to disclosure claiming (1) not documents to which the RTI Act applied – documents related to judicial function or not documents of an agency; (2) exempt information – breach of confidence; (3) disclosure would, on balance be contrary to the public interest). | Parties filed all materials required by QCAT. Awaiting allocation of oral hearing date by QCAT. | Appeal finalised (oral hearing of 10 related appeals occurred 7 November 2017). Appeal allowed, OIC decision set aside and access to documents refused. QCAT decision made 2 March 2018— in a series of 6 decisions issued by QCAT, this was the first decision. |
| APL249-16 | Department of Justice & Attorney-General and Information Commissioner and Alex McKean and The Honourable Justice TF Carmody | Appeal of OIC decision referred to above made 27 June 2016 (appellant, DJAG, objected to disclosure claiming (1) not documents to which the RTI Act applied – related to judicial function documents or not documents of an agency; (2) disclosure would, on balance, be contrary to the public interest). | Parties filed all materials required by QCAT. Awaiting allocation of oral hearing date by QCAT. | Appeal finalised (oral hearing of 10 related appeals occurred 7 November 2017). Appeal allowed, OIC decision set aside and access to documents refused. QCAT decision made 2 March 2018— in a series of 6 decisions issued by QCAT, this was the first decision. |
| APL240-16 | The Honourable Justice TF Carmody and Information Commissioner and Queensland | Appeal of OIC decision made 27 June 2016 to disclose documents relating to the Chief Justice’s dismissal of a judge from the role of Senior Judge Administrator and reinstatement of another judge to that role (appellant, Carmody, objected to | Parties filed all materials required by QCAT. | Appeal finalised (oral hearing of 10 related appeals occurred 7 November 2017). |

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|--|--|--|--|
| | Newspapers Pty Ltd and Department of Justice & Attorney-General | disclosure claiming (1) not documents to which the RTI Act applied – related to judicial function or not documents of an agency; (2) exempt information – breach of confidence; (3) disclosure would, on balance, be contrary to the public interest). | Awaiting allocation of oral hearing date by QCAT. | Appeal allowed, OIC decision set aside and access to documents refused. QCAT decision made 2 March 2018– in a series of 6 decisions issued by QCAT, this was decision numbered 2. |
| APL248-16 | Department of Justice & Attorney-General and Information Commissioner and Queensland Newspapers Pty Ltd and The Honourable Justice TF Carmody | Appeal of OIC decision referred to above made 27 June 2016 (appellant, DJAG, objected to disclosure claiming (1) not documents to which the RTI Act applied – related to judicial function or not documents of an agency; (2) disclosure would, on balance, be contrary to the public interest). | Parties filed all materials required by QCAT. Awaiting allocation of oral hearing date by QCAT. | Appeal finalised (oral hearing of 10 related appeals occurred 7 November 2017). Appeal allowed, OIC decision set aside and access to documents refused. QCAT decision made 2 March 2018 – in a series of 6 decisions issued by QCAT, this was decision numbered 2. |
| APL242-16 | The Honourable Justice TF Carmody and Information Commissioner and Queensland Newspapers Pty Ltd and Department of Justice & Attorney-General | Appeal of OIC decision made 27 June 2016 to disclose correspondence between the Chief Justice and other judges and the Chief Justice and the Attorney-General relating to the Chief Justice’s court sitting arrangements (appellant, Carmody, objected to disclosure claiming documents not documents to which the RTI Act applied – related to judicial function or not documents of an agency; (2) exempt information – breach of confidence; (3) disclosure | Parties filed all materials required by QCAT. Awaiting allocation of oral hearing date by QCAT. | Appeal finalised (oral hearing of 10 related appeals occurred 7 November 2017). Appeal allowed, OIC decision set aside and access to documents refused. QCAT decision made 2 March 2018– in a series of 6 decisions issued by QCAT, this was decision numbered 3. |

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|---|--|--|---|
| | | would, on balance be contrary to the public interest). | | |
| APL250-16 | Department of Justice & Attorney-General and Information Commissioner and Queensland Newspapers Pty Ltd and The Honourable Justice TF Carmody | Appeal of OIC decision referred to above made 27 June 2016 (appellant, DJAG, objected to disclosure claiming not documents to which the RTI Act applied – related to judicial function or not documents of an agency; (2) disclosure would, on balance, be contrary to the public interest). | Parties filed all materials required by QCAT. Awaiting allocation of oral hearing date by QCAT. | Appeal finalised (oral hearing of 10 related appeals occurred 7 November 2017). Appeal allowed, OIC decision set aside and access to documents refused. QCAT decision made 2 March 2018– in a series of 6 decisions issued by QCAT, this was decision numbered 3. |
| APL243-16 | The Honourable Justice TF Carmody and Information Commissioner and Seven Network (Operations) Limited and Department of Justice & Attorney-General | Appeal of OIC decision made 27 June 2016 to disclose communications involving the Chief Justice relating to an election outcome of a particular seat (appellant, Carmody, objected to disclosure claiming (1) documents not documents to which the RTI Act applied – related to judicial function or not documents of an agency; (2) exempt information – breach of confidence; (3) disclosure would, on balance, be contrary to the public interest). | Parties filed all materials required by QCAT. Awaiting allocation of oral hearing date by QCAT. | Appeal finalised (oral hearing of 10 related appeals occurred 7 November 2017). Appeal allowed, OIC decision set aside and access to documents refused. QCAT decision made 2 March 2018– in a series of 6 decisions issued by QCAT, this was decision numbered 4. |
| APL247-16 | Department of Justice & Attorney-General and Information Commissioner and | Appeal of OIC decision referred to above made 27 June 2016 (appellant, DJAG, objected to disclosure claiming documents not documents to which the RTI Act applied – documents not documents of an agency or related to judicial function; (2) disclosure | Parties filed all materials required by QCAT. | Appeal finalised (oral hearing of 10 related appeals occurred 7 November 2017). |

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|---|---|--|---|
| | Seven Network (Operations) Limited and The Honourable Justice TF Carmody | would, on balance, be contrary to the public interest). | Awaiting allocation of oral hearing date by QCAT. | Appeal allowed, OIC decision set aside and access to documents refused. QCAT decision made 2 March 2018– in a series of 6 decisions issued by QCAT, this was decision numbered 4. |
| APL342-16 | The Honourable Justice TF Carmody and Information Commissioner and Seven Network (Operations) Limited and Department of Justice & Attorney-General | Appeal of OIC decision dated 19 September 2016 to disclose documents about the Department’s processing of an access application which concerned the appellant (appellant, Carmody, objected to disclosure claiming its disclosure would, on balance, be contrary to the public interest). | Parties filed all materials required by QCAT. Awaiting allocation of oral hearing date by QCAT. | Appeal finalised (oral hearing of 10 related appeals occurred 7 November 2017). Appeal allowed, OIC decision set aside and access to documents refused. QCAT decision made 2 March 2018– in a series of 6 decisions issued by QCAT, this was decision numbered 5. |
| APL343-16 | The Honourable Justice TF Carmody and Information Commissioner and Nationwide News Pty Ltd t/as The Australian and Department of Justice & Attorney-General | Appeal of OIC decision dated 19 September 2016 to disclose documents recording consultation between the Department’s RTI unit and Supreme Court judges, including the appellant, which occurred as part of the Department’s processing of various access applications in 2015 (appellant, Carmody, objected to disclosure claiming its disclosure would, on balance, be contrary to the public interest). | Parties filed all materials required by QCAT. Awaiting allocation of oral hearing date by QCAT. | Appeal finalised (oral hearing of 10 related appeals occurred 7 November 2017). Appeal allowed, OIC decision set aside and access to documents refused. QCAT decision made 2 March 2018– in a series of 6 decisions issued by QCAT, this was decision numbered 6. |

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|-----------|---|---|--|---|
| APL295-16 | Powell and Thwaites and Queensland University of Technology and Information Commissioner | Appeal of two OIC decisions made 30 August 2016 finding that the access applications did not comply with all relevant requirements of the IP Act. | <p>QCAT appeal finalised (oral hearing 15/12/2016). Appeal allowed, OIC decisions set aside, applications remitted to QUT for processing (with processing period to be taken to have commenced 24/11/16) and for each party bear their own costs. QCAT decision dated 19/12/2016 (note – due to the particular circumstances of these matters, QCAT was not required to determine the merits of this appeal).</p> <p>However on 21/12/2016, the applicants appealed to Court of Appeal claiming the QCAT decision was incorrect in 2 respects (Court of Appeal – CA13360/16). Oral hearing before Court of Appeal occurred 17/05/2017.</p> | <p>Appeal to Court of Appeal finalised. Appeal allowed to set aside orders 4 and 5 of the QCAT decision but appeal otherwise dismissed. Court of Appeal decision made 8 September 2017.</p> <p>(Prior to the QCAT decision, QUT agreed to process the access applications. As documents were released to the applicants and they did not seek internal or external review of QUT’s decisions in this regard, there was little utility in the outcome of the appeal to the Court of Appeal. This was specifically noted in the Court of Appeal decision).</p> |
| APL301-16 | Screen Queensland Pty Ltd and Information | Appeal of OIC decision made 18 August 2016 to disclose information about financial assistance provided to The Walt Disney Company (Australia) | Parties filed all materials required by QCAT. | Awaiting QCAT decision (oral hearing occurred 12 July 2017). |

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|--|---|--|---|
| | Commissioner and Glass Media Group Pty Ltd and Department of Premier and Cabinet and Mukiri Productions Pty Ltd | Pty Ltd to secure production in Queensland of a feature film (appellant, Screen Queensland Pty Ltd, objected to disclosure claiming information was (1) exempt information – breach of confidence, cabinet exemption – or (2) its disclosure would, on balance, be contrary to the public interest). | Oral hearing scheduled for 12/07/2017. | |
| APL337-16 | Underwood and Department of Housing and Public Works and Information Commissioner | <p>This matter (together with 3 other matters relating to the same applicant) was remitted back to OIC from QCAT.</p> <p>This is an appeal of OIC decision made 15 September 2016. OIC decided to refuse access to a large number of pages in tenancy records on the grounds that (1) disclosure of certain information—comprising mobile telephone numbers, body corporate and private sector employee information and third party information—would, on balance, be contrary to the public interest; (2) some information was irrelevant information; (3) some information was exempt information—legal professional privilege; (5) further documents requested by the applicant were nonexistent or unlocatable. OIC also decided to refuse to deal-with part of the application which sought documents dealt with in a prior application.</p> | <p>OIC and the Department filed all materials as required by QCAT.</p> <p>Applicant sought and obtained a 3 month adjournment of the appeal proceedings to May 2017.</p> <p>Applicant filed a number of interlocutory applications, seeking further adjournment of the appeal proceedings. This delayed the requirement for the applicant to file submissions in the appeal.</p> | <p>Appeal withdrawn 09 April 2018, as agreed at mediation conducted with the Department on 29 March 2018.</p> <p>Note – as a result of the mediated outcome, QCAT was not required to determine the merits of the appeal.</p> <p>On 8 December 2017, QCAT referred this appeal to mediation with the applicant’s four (4) other appeals. The applicant and the Department attended mediation on 29 January 2018 and 29 March 2018.</p> <p>Prior to the mediation referral: (1) OIC filed further material as required by QCAT; and (2) the applicant lodged a further three (3) applications seeking additional orders in this appeal (1 of which was not dealt with by QCAT pending the mediation outcome)</p> |

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|---|---|--|--|
| | | | | Subsequent to the mediation referral, the applicant lodged a further (three) 3 applications seeking additional orders, most of which was not dealt with by QCAT pending the mediation outcome. |
| APL396-16 | NBN Co Limited and Queensland Information Commissioner and Sunshine Coast Regional Council and Straker | Appeal of OIC decision made 28 October 2016 to release some of the information sought in an access application (appellant, NBN Co Limited, objected to disclosure claiming information was (1) exempt – breach of confidence; or (2) its disclosure would, on balance, be contrary to the public interest). | Parties filed all materials as required by QCAT. Awaiting allocation of oral hearing date by QCAT. | Awaiting QCAT decision (oral hearing occurred 6 March 2018). Due to unavailability of applicant's counsel, the initially scheduled 15 December 2017 oral hearing date was vacated. |
| APL015-17 | Underwood and Department of Housing and Public Works and Information Commissioner | Appeal of OIC decision made 9 December 2016 refusing to deal with an application for tenancy files on the ground that dealing with the application would, if carried out, substantially and unreasonably divert the resources of an agency from their use by the agency in performing its functions. | OIC filed material as required by QCAT. Applicant obtained a 3 month adjournment to May 2017. In May 2017, QCAT listed the appeal for oral hearing on 28/09/2017. The applicant subsequently lodged an application seeking vacation of (1) the hearing date and (2) the applicant's obligation to file submissions. | Appeal withdrawn 9 April 2018 , as agreed at mediation conducted with the Department on 29 March 2018. Note – as a result of the mediated outcome, QCAT was not required to determine the merits of the appeal. On 8 December 2017, QCAT referred this appeal to mediation with the applicant's 4 other appeals. The applicant and the Department attended mediation on 29 January 2018 and 29 March 2018. Prior to the mediation referral: |

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|---|--|---|--|
| | | | | <p>(1) OIC filed further material as required by QCAT and the applicant lodged a further (four) 4 applications seeking further orders in this appeal (1 of which was not dealt with by QCAT pending the mediation outcome)</p> <p>(3) on 25 July 2017, QCAT vacated the previously scheduled oral hearing date (to enable the applicant to prepare for the oral hearing in APL126-16).</p> <p>Subsequent to the mediation referral, the applicant lodged a further (three) 3 applications seeking additional orders, most of which was not dealt with by QCAT pending the mediation outcome.</p> |
| APL087-17 | Flori and the Information Commissioner and Commissioner of the Queensland Police Service | Appeal of OIC decision made 16 February 2017 refusing to deal with an access application under the IP Act seeking access to information in QPRIME database (on the ground that all the requested information was exempt information, as its disclosure could reasonably be expected to prejudice QPS's lawful methods and procedures). | OIC filed material as required by QCAT. | Appeal withdrawn , as confirmed by QCAT decision dated 22 August 2017. |

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|---|--|--|---|
| APL094-17 | Ramsay Health Care Limited and Information Commissioner and Queensland Nurses and Midwives' Union and Sunshine Coast Hospital and Health Service | Appeal of OIC decision made 23 February 2017 to release information sought in access application (appellant, Ramsay Health Care Limited, objected to disclosure claiming information was (1) exempt – breach of confidence – or (2) its disclosure would, on balance, be contrary to the public interest). | Parties filing material with QCAT. | Awaiting QCAT decision. Parties have filed all required materials with QCAT and the matter is being determined on the papers (without an oral hearing). |
| APL101-17 | Pluta and the Information Commissioner | Appeal of OIC decision made 16 February 2017 refusing access to report prepared by a legal firm, on the ground that it was exempt information (being subject to legal professional privilege). | Appeal withdrawn 26 April 2017. | |
| APL106-17 | Kelson and Queensland Police Service and Information Commissioner | Appeal of OIC decision made on 3 March 2017 refusing access to documents concerning complaints and investigations (on ground disclosure of refused information would, on balance, be contrary to the public interest). Decision also found a requested, but unlocated, audio recording was outside scope. | OIC and QPS filed material with QCAT in accordance with QCAT directions. | Proceedings ongoing. This appeal will not be progressed before 10 April 2017. On 10 April 2018, QCAT set procedural directions for the filing and service of submissions in this appeal. On 22 December 2017, QCAT dismissed (two) 2 applications made by the applicant seeking orders for production of documents and listed the matter for a compulsory conference. The compulsory |

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|--|---|---|---|
| | | | | conference QCAT held with the applicant and QPS on 2 February 2018 did not resolve the matter. |
| APL138-17 | Underwood and Department of Housing and Public Works and the Information Commissioner | <p>This matter (together with 3 other matters relating to the same applicant) was remitted back to OIC from QCAT.</p> <p>This is an appeal of OIC decision made 20 April 2017. OIC decided to refuse access to a large number of pages in tenancy records appearing on the grounds (1) disclosure of information— comprising mobile telephone numbers, body corporate and private sector employee information and third party information—would, on balance, be contrary to the public interest to release; (2) some information was irrelevant information; (3) some information was exempt information— legal professional privilege. OIC also refused to deal-with part of the application which sought documents dealt with in a prior application.</p> | <p>OIC filed material as required by QCAT.</p> <p>Applicant obtained a 3 month adjournment to May 2017.</p> | <p>Appeal withdrawn 9 April 2018, as agreed at mediation conducted with the Department on 29 March 2018. Note – as a result of the mediated outcome, QCAT was not required to determine the merits of the appeal.</p> <p>On 8 December 2017, QCAT referred this appeal to mediation with the applicant’s 4 other appeals. The applicant and the Department attended mediation on 29 January 2018 and 29 March 2018.</p> <p>Prior to the mediation referral: (1) OIC filed further material as required by QCAT; and (2) the applicant lodged a further (three) 3 applications seeking further orders in this appeal (1 of which was not dealt with by QCAT pending the mediation outcome). Subsequent to the mediation referral, the applicant lodged a further (three) 3 applications seeking additional orders, most of which was not dealt</p> |

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|---|---|--------------------------------------|---|
| | | | | with by QCAT pending the mediation outcome. |
| APL197-17 | Shelton and Office of the Information Commissioner and Queensland Police Service | Appeal of OIC decision made 29 May 2017 refusing to deal with an access application under the IP Act seeking access to information in QPRIME database (on the ground that all the requested information was exempt information, as its disclosure could reasonably be expected to prejudice QPS's lawful methods and procedures). | Appeal notice received 21 June 2017. | Awaiting QCAT decision. Parties have filed all required materials with QCAT and the matter is being determined on the papers (without an oral hearing). |

Update of appealed matters which QCAT remitted back to OIC by decisions issued in 2016-17 year:

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|---|---|--|--|
| APL160-13 | Sibelco Australia Limited and Information Commissioner and Department of Natural Resources and Mines | Appeal of OIC decision made 15 March 2013 to release information sought in access application (applicant claiming information was exempt – parliamentary privilege, breach of confidence, legal professional privilege, and contrary to the public interest to release and/or outside scope). | Appeal finalised (oral hearing occurred 12 December 13). Appeal allowed, OIC decision set aside and matter remitted to OIC for reconsideration. QCAT issued its decision 29 May 2017. | Remitted matter still being progressed by OIC. |
| APL259-14 | Stanway and Frederick Marsden Youth Centre Inc | Appeal of OIC decision made 4 June 2014 that entity created by letters patent does not fall within definition of public authority for purpose of the RTI Act and therefore an application cannot be made for access to documents of that entity. | Appeal finalised (oral hearing occurred 20 November 2014). Appeal allowed, OIC decision set aside and application remitted to OIC to consider according to law. QCAT issued its decision 7 March 2017 | The remitted matter has been finalised. Following disclosure of certain information by the incorporated association, the applicant agreed to informally resolve the review on 31 August 2017. |
| APL393-15 | Marshall-Holst and Information Commissioner and Metro North Hospital and Health Service | Appeal of OIC decision made 27 August 2015 refusing access to information relating to investigation of workplace grievance – relates to information (1) identifying individuals the subject of allegations, (2) provided by others to workplace investigation and (3) about action taken against other individuals as a result of allegations. (CTPI) | Appeal Finalised (Oral hearing occurred 29 July 2016). Appeal allowed, OIC decision set aside and matter remitted to OIC 'for reconsideration raking the factors in schedule 4, part 2, item 12 of the Right to Information Act 2009 into account with the factors already considered by the Information Commissioner'. QCAT issued its decision 15 March 2017. | The remitted matter has been finalised. The matter was informally resolved on 20 July 2017 on the basis that the applicant did not respond to OIC's view that access may be refused to the reconsidered information. |

Update of appeals lodged in 2015-16 which remained outstanding as at 30 June 2017:

| QCAT Appeal number | Parties | Outline of issues | Status at 30/06/2017 | Status change since 30/06/2017 |
|--------------------|---|---|---|---|
| APL444-15 | Underwood and Information Commissioner and Minister for Housing and Public Works | <p>This matter (together with 3 other matters relating to the same applicant) was remitted back to OIC from QCAT.</p> <p>This is an appeal of OIC decision made 29 September 2015 to refuse information in tenancy records appearing on 4 pages – comprises mobile telephone numbers of public servant officers on 2 pages and segments of information concerning third parties on 2 pages.</p> | <p>QCAT allowed the applicant to amend grounds of appeal and listed the appeal for oral hearing on 25 July 2017.</p> <p>Applicant filed a large number of applications seeking further orders in this appeal (including seeking adjournment of the scheduled oral hearing).</p> | <p>Appeal withdrawn 9 April 2018, as agreed at mediation conducted with the Minister’s representative on 29 March 2018. Note – as a result of the mediated outcome, QCAT was not required to determine the merits of the appeal, notwithstanding an oral hearing had occurred.</p> <p>On 8 December 2017, before QCAT had issued a decision following the oral hearing of this appeal, QCAT referred this appeal to mediation with the applicant’s 4 other appeals. The inclusion of this appeal in the mediation was later confirmed by QCAT on 25 January 2018. The applicant and the Minister’s representative attended mediation on 29 January 2018 and 29 March 2018.</p> <p>Following the mediation referral, the applicant lodged a further 3 applications seeking additional orders in this appeal (most of</p> |

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| | | | | which was not dealt with by QCAT pending the mediation outcome). |
| APL092-16 | Stafford and Information Commissioner and Queensland Police | Appeal of OIC decision made 18 February 2016 refusing access to a report, resulting from review of an original murder investigation, on the basis that it was exempt information – legal professional privilege. | Awaiting QCAT decision (oral hearing occurred 30 September 2016). Due to a change of circumstances which occurred after the 30 September 2016 oral hearing and before the issue of QCAT’s decision, a further oral hearing occurred on 22 June 2017. | Awaiting QCAT decision (oral hearings 30 June 2016 and 22 June 2017). |
| APL126-16 | Underwood and Information Commissioner and Department of Housing and Public Works | This matter (together with 3 other matters relating to the same applicant) was remitted back to OIC from QCAT. This is an appeal of OIC decision made 17 March 2016. OIC decided to refuse access to information in tenancy records appearing on 246 full pages and 76 part pages on the grounds that (1) disclosing some information—comprising mobile telephone numbers, body corporate information and third party information—would, on balance, be contrary to the public interest; (2) some information was irrelevant information; (3) some information was exempt information – legal professional privilege. OIC also refused to deal with part of the application which sought documents dealt with in a prior application. | Most material filed as required by QCAT (applicant has one filing outstanding). The applicant lodged a large number of interlocutory applications seeking various orders in the appeal. In response to one such application, the applicant obtained a 3 month adjournment of the appeal proceedings to May 2017. The appeal was then listed for an oral hearing on 26 October 2017. Applicant filed further applications: (1) with QCAT, seeking various adjournments of the proceedings (including vacation of the hearing date) (2) with Supreme Court, seeking judicial review of Thomas J’s decision and reasons dated 1 November 2016 (which dismissed an interlocutory application filed 5 July 2016). | Appeal withdrawn 9 April 2018 , as agreed at mediation conducted with the Department on 29/03/2018. Note – as a result of the mediated outcome, QCAT was not required to determine the merits of the appeal. On 8 December 2017, QCAT referred this appeal to mediation with the applicant’s 4 other appeals. The applicant and the Department attended mediation on 29 January 2018 and 29 March 2018. Prior to the mediation referral: (1) the applicant lodged a further 3 applications seeking additional orders in this appeal (1 of which |

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|--|--|--|--|--|
| | | | | <p>were not dealt with by QCAT pending the mediation outcome).</p> <p>(2) On 25/09/2017, QCAT vacated the oral hearing (being 26/10/2017) in response to an application made by the applicant</p> <p>(3) OIC understands the application for judicial review of Thomas J's decision was dismissed by the Supreme Court. Following the mediation referral, the applicant lodged a further 3 applications seeking additional orders in this appeal (most of which was not dealt with by QCAT pending the mediation outcome).</p> |
|--|--|--|--|--|